10–3–08 Friday
Vol. 73 No. 193 Oct. 3, 2008

Pages 57475–58018

Federal Register

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How To Cite This Publication: Use the volume number and the page number. Example: 73 FR 12345.

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

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Presidential Documents

Title 3—

The President

Proclamation 8296 of September 30, 2008

To Modify Duty-free Treatment Under The Caribbean Basin Economic Recovery Act and for Other Purposes

By the President of the United States of America

A Proclamation

1. Section 213A(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703a(b)) (the ''CBERA''), as amended by section 15402(a)(2) of the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (part 1 of subtitle D of title XV of Public Law 110–246, 122 Stat. 2289) (the ''HOPE II Act''), provides that preferential tariff treatment may be provided for certain apparel and other articles originating in Haiti that are imported directly from Haiti or the Dominican Republic into the customs territory of the United States.

2. Pursuant to section 213A(f)(3) of CBERA (19 U.S.C. 2703a(f)(3)), as redesignated by section 15403(2) of the HOPE II Act (122 Stat. 2302), apparel and other articles described in section 213A(b) of CBERA that are shipped from the Dominican Republic to the United States directly or through the territory of an intermediate country shall not qualify for the preferential tariff treatment provided for under section 213A(b) until the President certifies to the Congress that Haiti and the Dominican Republic have developed procedures to prevent unlawful transshipment of the articles and the use of counterfeit documents related to the importation of the articles into the United States.

3. I have determined, and hereby certify, that Haiti and the Dominican Republic have developed the procedures described in section 213A(f)(3) of CBERA.

4. Section 15406 of the HOPE II Act (122 Stat. 2308) authorizes the President to exercise the authority provided under section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483) (the ''1974 Act''), to proclaim such modifications to the Harmonized Tariff Schedule of the United States (HTS) as may be necessary to carry out the HOPE II Act.

5. I have determined that it is appropriate to authorize the United States Trade Representative (USTR) to perform the following functions: the functions set forth in section 213A(d)(4) of CBERA, as amended (122 Stat. 2307; 19 U.S.C. 2703a(d)(4)); the reporting function set forth in section 213A(e)(1)(B)(ii) of CBERA, as amended (122 Stat. 2302; 19 U.S.C. 2703a(e)(1)(B)(ii)); the consultation function set forth in section 213A(e)(1)(C)(i) of CBERA, as amended (122 Stat. 2302–3; 19 U.S.C. 2703a(e)(1)(C)(i)); and the functions set forth in section 213A(e)(5) of CBERA, as amended (122 Stat. 2307; 19 U.S.C. 2703a(e)(5)).

6. I have determined that it is appropriate to authorize the Secretary of Labor, in consultation with the USTR, to perform the functions related to identifying producers and seeking to provide assistance to such producers set forth in section 213A(e)(4)(B)(i) and (ii) of CBERA, as amended (122 Stat. 2306; 19 U.S.C. 2703a(e)(4)(B)(i), (ii)).

7. In Presidential Proclamation 8272 of June 30, 2008, I waived, pursuant to section 503(d)(1) of the 1974 Act (19 U.S.C. 2463(d)(1)), the application of the competitive need limitations in section 503(c)(2)(A) of the 1974 Act

(19 U.S.C. 2463(c)(2)(A)) with respect to certain articles from Turkey. A technical rectification to the HTS is required to provide the intended tariff treatment.

8. Section 604 of the 1974 Act authorizes the President to embody in the HTS the substance of relevant provisions of that Act, or other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including section 15406 of the HOPE II Act, section 604 of the 1974 Act, and section 301 of title 3, United States Code, do proclaim that:

(1) In order to provide the tariff treatment for articles imported directly from Haiti or the Dominican Republic provided for in section 213A(b) of CBERA, as amended by the HOPE II Act, the HTS is modified as set forth in the Annex to this proclamation.

(2) The modifications to the HTS set forth in the Annex to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date set forth in the Annex.

(3) The USTR is hereby authorized to perform the functions set forth in section 213A(d)(4) of CBERA; the reporting function set forth in section 213A(e)(1)(B)(ii) of CBERA; the consultation function set forth in section 213A(e)(1)(C)(i) of CBERA; and the functions set forth in section 213A(e)(5) of CBERA.

(4) The Secretary of Labor, in consultation with the USTR, is hereby authorized to perform the functions related to identifying producers and seeking to provide assistance to such producers set forth in section 213A(e)(4)(B)(i) and (ii) of CBERA.

(5) In order to correct technical errors in Presidential Proclamation 8272, General Note 4(d) of the HTS is modified by deleting ''7413.00.50 Turkey,'' and the Rates of Duty 1-Special subcolumn for HTS subheading 7413.00.50 is modified by deleting the symbol ''A*'' and inserting the symbol ''A'' in lieu thereof, effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after July 1, 2008.

(6) The USTR shall notify the Congress of this proclamation and certification.

(7) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-third.

Billing code 3195–W9–P

ANNEX

TO MODIFY CERTAIN PROVISIONS OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after October 1, 2008, subchapter XX of chapter 98 of the Harmonized Tariff Schedule of the United States (HTS) is hereby modified as set forth below.

1. U.S. note 6(c) to such subchapter is modified by inserting after "from Haiti" the phrase "or the Dominican Republic".

2. U.S. note 6(e)(iv) and its subdivisions (A), (B), and (C) are all deleted, and the following new subdivision is inserted in lieu thereof:

"(iv) Entries of apparel articles that receive preferential treatment under any provision of law other than this note or are subject to the column 1-general rate of duty under the tariff schedule are not included in the annual aggregation under subdivision (e)(i) or (e)(ii) of this note unless the producer or entity controlling production elects, at the time the annual aggregation calculation is made, to include such entries in such aggregation."

3. U.S. note 6(g) is modified by--

(a) designating the existing text as subdivision (i);

(b) striking "9820.61.25, 9820.61.30 and 9820.62.12" and inserting in lieu thereof "9820.61.25 and 9820.61.30";

(c) striking "1.5", "1.75", and "2" from the column labeled "Percentage" in the table and inserting in lieu thereof "1.25", "1.25", and "1.25", respectively; and

(d) by inserting the following new subdivision (ii):

"(ii) Any apparel article that qualifies for preferential treatment under subdivisions (h) through (p), inclusive, of this note or any other provision of the tariff schedule shall not be subject to, or included in the calculation of, the quantitative limitations under subdivision (g)(i) of this note."

4. Subdivision (h) of U.S. note 6 is deleted and the following new provisions are inserted in lieu thereof:

"(h) (i) The preferential treatment provided under heading 9820.62.05 shall be extended to any apparel article classifiable under chapter 62 of the tariff schedule that is wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape or yarns and is imported directly from Haiti or the Dominican Republic, subject to subdivisions (h)(ii) and (h)(iii) of this note, without regard to the source of the fabric, fabric components, components knit-to-shape or yarns from which the article is made.

(ii) The preferential treatment provided under subdivision (h)(i) of this note shall be extended, in the 1-year period beginning October 1, 2008, and in each of the nine succeeding 1-year periods, to not more than 70,000,000 square meter equivalents of apparel articles described in such subdivision.

(iii) Any apparel article that qualifies for preferential treatment under subdivision (g) or subdivisions (i) through (p), inclusive, of this note or any other provision of the

tariff schedule shall not be subject to, or included in the calculation of, the quantitative limitation under subdivision (ii) of this note."

5. The text of U.S. note 6(i) is modified to read as follows:

"The preferential treatment provided under heading 9820.62.12 shall be extended to any article classifiable in subheading 6212.10 of the tariff schedule, if the article is wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape or yarns and is imported directly from Haiti or the Dominican Republic, without regard to the source of the fabric, fabric components, components knit-to-shape or yarns from which the article is made."

6. U.S. note 6 is modified by inserting the following new subdivisions in alphabetical sequence:

"(j) (i) The preferential treatment provided in heading 9820.61.35 shall be extended to any apparel article classifiable under chapter 61 of the tariff schedule that is wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape or yarns and is imported directly from Haiti or the Dominican Republic, subject to subdivisions (j)(ii), (j)(iii) and (j)(iv) of this note, without regard to the source of the fabric, fabric components, components knit-to-shape or yarns from which the article is made.

(ii) The preferential treatment described in subdivision (j)(i) of this note shall not apply to the following:

(A) the following apparel articles of cotton, for men or boys, that are classifiable under subheading 6109.10.00 of the tariff schedule:

(1) all white T-shirts, with short hemmed sleeves and hemmed bottom, with crew or round neckline or with V-neck and with a mitered seam at the center of the V, and without pockets, trim or embroidery;

(2) all white singlets, without pockets, trim or embroidery;

(3) other T-shirts, but not including thermal undershirts;

(B) T-shirts for men or boys that are classifiable under subheading 6109.90.10;

(C) the following apparel articles of cotton, for men or boys, that are classifiable under subheading 6110.20.20 of the tariff schedule:

(1) sweatshirts; or

(2) pullovers, other than sweaters, vests or garments imported as part of playsuits; or

(D) sweatshirts for men or boys, of man-made fibers and containing less than 65 percent by weight of man-made fibers, that are classifiable under subheading 6110.30.30 of the tariff schedule.

(iii) The preferential treatment described in subdivision (j)(i) of this note shall be extended, in the 1-year period beginning October 1, 2008, and in each of the 9 succeeding 1-year periods, to not more than 70,000,000 square meter equivalents of apparel articles described in such subdivision.

(iv) Any apparel that qualifies for preferential treatment under subdivisions (g) through (i) or (k) through (p), inclusive, of this note or any other provision of the tariff schedule shall not be subject to, or included in the calculation of, the quantitative limitation under subdivision (j)(iii) of this note.

(k) The preferential treatment provided in heading 9820.61.40 shall be extended to any of the following apparel articles that is wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape or yarns and is imported directly from Haiti or the Dominican Republic without regard to the source of the fabric, fabric components, components knit-to-shape or yarns from which the article is made:

(i) with respect to chapter 61, subheadings 6102.20.00, 6102.90.90 (for goods subject to cotton restraints), 6104.13.20, 6104.19.15, 6104.19.60 (for jackets imported as parts of suits), 6104.19.80 (for jackets imported as parts of suits and subject to cotton restraints or subject to man-made fiber restraints), 6104.22.00 (for garments described in heading 6102 or jackets and blazers described in heading 6104), 6104.29.20 (for garments described in heading 6102 or jackets and blazers described in heading 6104, the foregoing subject to cotton restraints), 6104.32.00, 6104.39.20 (for goods subject to cotton restraints), 6112.11.00 (for women's or girls' garments described in heading 6101 or 6102), 6113.00.90 (for coats and jackets of cotton, for women or girls) or 6117.90.90 (for coats and jackets of cotton); or

(ii) with respect to chapter 62, subheadings 6202.12.20, 6202.19.90 (for goods subject to cotton restraints), 6202.91.20 (for goods for women), 6202.92.15, 6202.92.20 (other than padded, sleeveless jackets without attachments for sleeves), 6202.93.45, 6202.99.90 (for goods subject to cotton restraints), 6203.39.90 (for goods subject to wool restraints), 6204.12.00 (for jackets imported as parts of suits), 6204.13.20, 6204.19.20, 6204.19.80 (for jackets imported as parts of suits and subject to cotton restraints, or for goods subject to man-made fiber restraints), 6204.22.30 (for garments described in heading 6202, or for jackets and blazers described in heading 6204), 6204.23.00, 6204.29, 6204.32, 6204.33.20, 6204.39.80, 6204.42.30 (for garments for girls, other than of corduroy), 6204.43.40 (for garments for girls), 6204.44.40 (for garments for girls), 6205.20.20 (for dress shirts for men, with two or more colors in the warp and/or the filling, each with collar and sleeve size stated in inches, without dual collar sizing, the foregoing individually packaged with chipboards, pins, jett clips, individual polybags and hang tags ready for retail sale), 6205.30.20 (for dress shirts for men, with two or more colors in the warp and/or the filling, each with collar and sleeve size stated in inches, without dual collar sizing, the foregoing individually packaged with chipboards, pins, jett clips, individual polybags and hang tags ready for retail sale), 6207 (for boxers, pajamas or nightwear only), 6208 (for boxers, pajamas or nightwear only), 6209.20.10, 6210.30.90 (for garments other than of linen), 6210.50.90 (for anoraks), 6211.20.15 (for anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets), for women or girls, of cotton, imported as parts of ski suits), 6211.20.58 (for goods of cotton), 6211.41.00 (for jackets and jacket-type garments excluded from heading 6202), 6211.42.00 (for track suits, other than trousers, or for jackets and jacket-type garments excluded from heading 6202), 6212.10 or 6217.90.90 (for coats and jackets, of cotton).

(l) The preferential tariff treatment provided in heading 9820.42.05 shall be extended to any article classifiable under subheadings 4202.12, 4202.22, 4202.32 or 4202.92 of the tariff schedule that is wholly assembled in Haiti and is imported directly from Haiti or the

Dominican Republic, without regard to the source of the fabric, components or materials from which the article is made.

(m) The preferential tariff treatment provided in headings 9820.65.05 shall be extended to any article classifiable under heading 6501, 6502 or 6504 or subheading 6505.90 of the tariff schedule that is wholly assembled, knit-to-shape or formed in Haiti from any combination of fabrics, fabric components, components knit-to-shape or yarns and is imported directly from Haiti or the Dominican Republic, without regard to the source of the fabric, fabric components, components knit-to-shape or yarns from which the article is made.

(n) The preferential tariff treatment provided in heading 9820.62.20 shall be extended to any of the following apparel articles that is wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape or yarns and is imported directly from Haiti or the Dominican Republic, without regard to the source of the fabric, fabric components, components knit-to-shape or yarns from which the article is made:

(i) Pajama bottoms and other sleepwear for women and girls, of cotton, that are classifiable under subheading 6208.91.30, or of man-made fibers, that are classifiable under subheading 6208.92.00; or

(ii) Pajama bottoms and other sleepwear for girls, of other textile materials, that are classifiable under subheading 6208.99.20.

(o) The preferential treatment provided under heading 9820.62.25 shall be extended to apparel articles wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape or yarns and imported directly from Haiti or the Dominican Republic, without regard to the source of the fabric, fabric components, components knit-to-shape or yarns from which the articles are made, if such apparel articles are accompanied by an earned import allowance certificate that reflects the amount of credits equal to the total square meter equivalents of such apparel articles, in accordance with the program established by the Secretary of Commerce pursuant to section 15402 of Public Law 110-246. For purposes of determining the quantity of square meter equivalents under this subdivision, the conversion factors listed in "Correlation: U.S. Textile and Apparel Industry Category System with the Harmonized Tariff Schedule of the United States of America, 2008" or its successor publications of the United States Department of Commerce shall apply.

(p) The preferential treatment provided under heading 9820.62.30 shall be extended to any apparel article that is wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape or yarns and is imported directly from Haiti or the Dominican Republic, without regard to the source of the fabrics, fabric components, components knit-to-shape or yarns from which the article is made, if the fabrics, fabric components, components knit-to-shape or yarns comprising the component that determines the tariff classification of the article are of any of the following:

(i) fabrics or yarns, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under general note 12(t) to the tariff schedule;

(ii) fabrics or yarns, to the extent that such fabrics or yarns are designated as not being available in commercial quantities for purposes of--

(A) heading 9820.11.27;

(B) heading 9819.11.24;

(C) heading 9821.11.10;

(D) heading 9822.05.01; or

(E) any other provision, relating to determining whether a textile or apparel article is an originating good eligible for preferential treatment, of a law that implements a free trade agreement entered into by the United States that is in effect at the time the claim for preferential treatment is made,

without regard to the source of the fabrics or yarns."

7. The article description of heading 9820.61.25 is modified to read as follows:

"Apparel articles described in U.S. note 6(c) to this subchapter imported directly from Haiti or the Dominican Republic during an applicable 1-year period specified in U.S. note 6(b)(ii) to this subchapter, subject to the limitations provided in U.S. note 6(g)(i) to this subchapter".

8. The article description of heading 9820.61.30 is modified to read as follows:

"Apparel articles described in U.S. note 6(e) to this subchapter imported directly from Haiti or the Dominican Republic during an applicable 1-year period specified in U.S. note 6(b)(ii) to this subchapter, subject to the limitations provided in such U.S. note 6(g)(i) to this subchapter".

9. The article description of heading 9820.62.05 is modified to read as follows:

"Apparel articles of chapter 62 to the tariff schedule, under the terms of U.S. note 6(h) to this subchapter and imported directly from Haiti or the Dominican Republic during an applicable 1-year period specified in U.S. note 6(h)(ii) to this subchapter, subject to the limitations provided in such U.S. note 6(h)(ii)".

10. The article description of heading 9820.62.12 is modified to read as follows:

"Brassieres of subheading 6212.10, under the terms of U.S. note 6(i) to this subchapter and imported directly from Haiti or the Dominican Republic".

11. The following new headings are inserted in numerical sequence in such subchapter, with the material inserted in the columns entitled "Heading/Subheading", "Article Description", and "Rates of Duty Special", respectively:

"9820.42.05	Articles of heading 4202 described in U.S. note 6(l) to this subchapter and imported directly from Haiti or the Dominican Republic		Free
9820.61.35	Apparel articles of chapter 61 described in U.S. note 6(j) to this subchapter and imported directly from Haiti or the Dominican Republic during any 1-year period specified in U.S. note 6(j)(iii) to this subchapter, subject to the limitations provided in such U.S. note 6(j)(iii)		Free
9820.61.40	Apparel articles described in U.S. note 6(k) to this subchapter and imported directly from Haiti or the Dominican Republic		Free

9820.62.20	Pajama bottoms and other sleepwear described in U.S. note 6(n) to this subchapter and imported directly from Haiti or the Dominican Republic	Free	
9820.62.25	Apparel articles described in U.S. note 6(o) to this subchapter and imported directly from Haiti or the Dominican Republic	Free	
9820.62.30	Apparel articles described in U.S. note 6(p) to this subchapter and imported directly from Haiti or the Dominican Republic	Free	
9820.65.05	Articles described in U.S. note 6(m) to this subchapter and imported directly from Haiti or the Dominican Republic	Free"	

[FR Doc. E8–23562
Filed 10–2–W9 8:45 am]
Billing code 3190–01–C

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. AMS–FV–08–0054; FV08–984–1 FR]

Walnuts Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the California Walnut Board (Board) for the 2008–09 marketing year from $0.0122 to $0.0158 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order which regulates the handling of walnuts grown in California. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The 2008–09 marketing year began on September 1, 2008, and ends on August 31, 2009. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* October 6, 2008.

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

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as established herein will be applicable to all assessable walnuts beginning on September 1, 2008, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule increases the assessment rate established for the Board for the 2008–09 and subsequent marketing years from $0.0122 to $0.0158 per kernelweight pound of assessable walnuts. The 2008–09 marketing year begins on September 1, 2008, and ends on August 31, 2009.

The California walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2007–08 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0122 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on May 28, 2008, and unanimously recommended 2008–09 expenditures of $4,594,300 and an assessment rate of $0.0158 per kernelweight pound of assessable walnuts. In comparison, 2007–08 budgeted expenditures were $3,777,120. The assessment rate of $0.0158 per kernelweight pound of assessable walnuts is $0.0036 per pound higher than the 2007–08 assessment rate. The increased assessment rate is necessary to cover increased expenses in the areas of domestic market promotion, production research activities, and Board operating expenses. The higher assessment rate should generate sufficient income to cover anticipated 2008–09 expenses.

The following table compares major budget expenditures recommended by the Board for the 2007–08 and 2008–09 marketing years:

Budget expense categories	2007–08	2008–09
Employee Expenses	$438,600	$410,500
Travel/Board Expenses	86,000	100,000
Office Costs/Annual Audit	139,500	142,500
Program Expenses Including Research		
Controlled Purchases	5,000	5,000
Crop Acreage Survey	85,000	
Crop Estimate	100,000	110,000
Production Research*	730,000	835,000
Domestic Market Development	2,002,000	2,935,000
Reserve for Contingency	191,020	56,300

*Includes Research Director's compensation and a contingency for production research issues.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 290,773,800 kernelweight pounds which should provide $4,594,300 in assessment income and allow the Board to cover its expenses. Unexpended funds may be retained in a financial reserve, provided that funds in the financial reserve do not exceed approximately two year's budgeted expenses. If not retained in a financial reserve, unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69 of the order.

The estimate for merchantable shipments is based on historical data, which is the prior year's production of 323,082 tons (inshell). Pursuant to § 984.51(b) of the order, this figure was converted to a merchantable kernelweight basis using a factor of 0.45 (323,082 tons × 2,000 pounds per ton × 0.45).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate will be in effect for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2008–09 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are currently 58 handlers of California walnuts subject to regulation under the marketing order and approximately 4,000 producers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those whose annual receipts are less than $6,500,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

Industry information for the most recent complete season indicates that 18 of 53 handlers (34 percent) shipped over $6,500,000 of merchantable walnuts and could be considered large handlers by the SBA. Thirty-five of 53 walnut handlers (66 percent) shipped under $6,500,000 of merchantable walnuts and could be considered small handlers.

The number of large walnut growers (annual walnut revenue greater than $750,000) can be estimated as follows. According to the National Agricultural Statistics Service (NASS), the two-year average yield per acre for 2005 and 2006 is approximately 1.63 tons. A grower with 287 acres with an average yield of 1.63 tons per acre would produce approximately 468 tons. The season average of grower prices for 2005 and 2006 published by NASS is $1,600 per ton. At that average price, the 468 tons produced on 287 acres would yield slightly less than $750,000 in annual revenue. The 2002 Agricultural Census indicated two percent of walnut farms were between 250 and 500 acres in size. The 287 acres would produce, on average, slightly less than the small business threshold level of $750,000 in annual revenue from walnuts, and is near the lower end of the 250 to 500 acreage range category of the 2002 census. Thus, it can be concluded that the number of large walnut farms in 2006 was likely around two percent. Based on the foregoing, it can be concluded that the majority of California walnut handlers and producers may be classified as small entities.

This rule increases the assessment rate established for the Board and collected from handlers for the 2008–09 and subsequent marketing years from $0.0122 per kernelweight pound of assessable walnuts to $0.0158 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2008–09 expenditures of $4,594,300 and an assessment rate of $0.0158 per kernelweight pound of assessable walnuts. The assessment rate of $0.0158 is $0.0036 higher than the 2007–08 assessment rate. The quantity of assessable walnuts for the 2008–09 marketing year is estimated at 323,082 tons, or 290,773,800 kernelweight pounds. Thus, the $0.0158 rate should provide $4,594,300 in assessment income and be adequate to meet the year's expenses. The increased assessment rate is primarily due to increased budget expenditures.

The following table compares major budget expenditures recommended by the Board for the 2007–08 and 2008–09 fiscal years:

Budget expense categories	2007–08	2008–09
Employee Expenses	$438,600	$410,500
Travel/Board Expenses	86,000	100,000
Office Costs/Annual Audit	139,500	142,500
Program Expenses Including Research:		
Controlled Purchases	5,000	5,000
Crop Acreage Survey	85,000	.....
Crop Estimate	100,000	110,000
Production Research *	730,000	835,000
Domestic Market Development	2,002,000	2,935,000
Reserve for Contingency	191,020	56,300

* Includes Research Director's compensation and contingency for production research issues.

The Board reviewed and unanimously recommended 2008–09 expenditures of $4,594,300. Prior to arriving at this budget, the Board considered alternative expenditure levels, but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 290,773,800 kernelweight pounds which should provide $4,594,300 in assessment income and allow the Board to cover its expenses. Unexpended funds may be retained in a financial reserve, provided that funds in the financial reserve do not exceed approximately two year's budgeted expenses. If not retained in a financial reserve, unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69 of the order.

According to NASS, the season average grower price for years 2006 and 2007 were $1,630 and $2,320 per ton, respectively. These prices provide a range within which the 2008–09 season average price could fall. Dividing these average grower prices by 2,000 pounds per ton provides an inshell price per pound range of $0.815 to $1.16. Dividing these inshell prices per pound by the 0.45 conversion factor (inshell to kernelweight) established in the order yields a 2008–09 price range estimate of $1.81 to $2.58 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of $0.0158 per kernelweight pound is divided by the low and high estimates of the price range. The estimated assessment revenue for the 2008–09 marketing year as a percentage of total grower revenue would thus likely range between 0.612 and 0.873 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the May 28, 2008, meeting was a public meeting and all entities, both large and small, were provided the opportunity to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on July 25, 2008 (73 FR 43378).

Copies of the proposed rule were also mailed or sent via facsimile to walnut handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending August 11, 2008, was provided to allow interested persons to respond to the proposal.

One comment was received during the comment period in response to the proposed rule. The comment was submitted by the Executive Director of the Board. The commenter points out that the proposed rule would establish the 2008–09 marketing year as a 13-month period from August 1, 2008, through August 31, 2009, and the assessment rate increase would be effective as of August 1, 2008. The commenter further states that the order was recently amended to change the marketing year from August through July to September through August. Accordingly, when the Board formulated its 2007–08 budget in May 2007, it established a 13-month period beginning on August 1, 2007, and ending on August 31, 2008, as its marketing year to accommodate the order amendment. Expenditures were planned and budgeted accordingly. The Board subsequently recommended its 2008–09 marketing year budget in May 2008 to cover a 12-month period beginning September 1, 2008, and ending August 31, 2009. The Board also intended for the assessment rate to be effective with the new marketing year beginning September 1, 2008.

The commenter also noted that one section of the proposed rule incorrectly references total budgeted expenses of $4,954,300. The correct amount, as referenced correctly in another section of rule should be $4,594,300. The commenter also states that Budget Expense Category tables in the proposed rule are incorrect because it omits a $30,000 item for production research contingencies and should need $835,000 instead of $805,000. Finally, the commenter indicated that the statement at the asterisk, which explains that the Research Director's compensation is included in the Production Research budget, should be modified to state that production research contingencies are also included in that budget.

As a result of this comment, modifications to the proposed rule are being made in this final rule. In order

to ensure consistency and continuity in the Board's financial planning and operations, and to recognize the recent order amendment revising the marketing year, the assessment rate change and the 2008–09 marketing year will become effective September 1, 2008. Additional modification is made to correct the erroneous references to the total expenditures. Finally, the rule is further modified to change the Budget Expense Category tables to include the amount budgeted for production research contingencies and the statement at the asterisk to indicate the production research contingencies are part of the Production Research budget. Although the tables were not necessarily intended to capture all the Board's expenses, the modifications may provide more clarity.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2008–09 marketing year began on September 1, 2008, and the marketing order requires that the rate of assessment for each year apply to all assessable walnuts handled during the year; the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 15-day comment period was provided for in the proposed rule and no comments in opposition to the rule were received.

List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

On and after September 1, 2008, an assessment rate of $0.0158 per kernelweight pound is established for California merchantable walnuts.

Dated: September 29, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–23390 Filed 10–2–08; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1297]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to reflect the annual indexing of the reserve requirement exemption amount and the low reserve tranche for 2009. The Regulation D amendments set the amount of total reservable liabilities of each depository institution that is subject to a zero percent reserve requirement in 2009 at $10.3 million, up from $9.3 million in 2008. This amount is known as the reserve requirement exemption amount. The Regulation D amendment also sets the amount of net transaction accounts at each depository institution that is subject to a three percent reserve requirement in 2009 at $44.4 million, up from $43.9 million in 2008. This amount is known as the low reserve tranche. The adjustments to both of these amounts are derived using statutory formulas specified in the Federal Reserve Act.

The Board is also announcing changes in two other amounts, the nonexempt deposit cutoff level and the reduced reporting limit, that are used to determine the frequency at which depository institutions must submit deposit reports.

DATES: *Effective date:* November 3, 2008.

Compliance dates: For depository institutions that report deposit data weekly, the new low reserve tranche and reserve requirement exemption amount will apply to the fourteen-day reserve computation period that begins Tuesday, December 2, 2008, and the corresponding fourteen-day reserve maintenance period that begins Thursday, January 1, 2009. For depository institutions that report deposit data quarterly, the new low reserve tranche and reserve requirement exemption amount will apply to the seven-day reserve computation period that begins Tuesday, December 16, 2008, and the corresponding seven-day reserve maintenance period that begins Thursday, January 15, 2009. For all depository institutions, these new values of the nonexempt deposit cutoff level, the reserve requirement exemption amount, and the reduced reporting limit will be used to determine the frequency at which a depository institution submits deposit reports effective in either June or September 2009.

FOR FURTHER INFORMATION CONTACT: Sophia Allison, Senior Counsel (202/452–3565), Legal Division, or Margaret Gillis DeBoer, Senior Financial Analyst (202/452–3139), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact (202/263–4869); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations, for the purpose of implementing monetary policy.

Section 11(a)(2) of the Federal Reserve Act (12 U.S.C. 248(a)(2)) authorizes the Board to require reports of liabilities and assets from depository institutions to enable the Board to conduct monetary policy. The Board's actions with respect to each of these provisions are discussed in turn below.

1. Reserve Requirements

Pursuant to section 19(b) of the Federal Reserve Act (Act), transaction account balances maintained at each depository institution are subject to reserve requirement ratios of zero, three, or ten percent. Section 19(b)(11)(A) of the Act (12 U.S.C. 461(b)(11)(A)) provides that a zero percent reserve

requirement shall apply at each depository institution to total reservable liabilities that do not exceed a certain amount, known as the reserve requirement exemption amount. Section 19(b)(11)(B) provides that, before December 31 of each year, the Board shall issue a regulation adjusting the reserve requirement exemption amount for the next calendar year if total reservable liabilities held at all depository institutions increase from one year to the next. No adjustment is made to the reserve requirement exemption amount if total reservable liabilities held at all depository institutions should decrease during the applicable time period. The Act requires the percentage increase in the reserve requirement exemption amount to be 80 percent of the increase in total reservable liabilities of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Total reservable liabilities of all depository institutions increased 13.0 percent (from $4,211 billion to $4,760 billion) between June 30, 2007, and June 30, 2008. Accordingly, the Board is amending Regulation D to increase the reserve requirement exemption amount by $1.0 million, from $9.3 million for 2008 to $10.3 million for 2009.[1]

Pursuant to Section 19(b)(2) of the Act (12 U.S.C. 461(b)(2)), transaction account balances maintained at each depository institution over the reserve requirement exemption amount and up to a certain amount, known as the low reserve tranche, are subject to a three percent reserve requirement. Transaction account balances over the low reserve tranche are subject to a ten percent reserve requirement. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The Act requires the adjustment in the low reserve tranche to be 80 percent of the percentage increase or decrease in total transaction accounts of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Net transaction accounts of all depository institutions increased 1.4 percent (from $646 billion to $655 billion) between June 30, 2007 and June 30, 2008. Accordingly, the Board is amending Regulation D (12 CFR part 204) to increase the low reserve tranche for net transaction accounts by $0.5 million, from $43.9 million for 2008 to $44.4 million for 2009.

For depository institutions that file deposit reports weekly, the new low reserve tranche and reserve requirement exemption amount will be effective for the fourteen-day reserve computation period beginning Tuesday, December 2, 2008, and for the corresponding fourteen-day reserve maintenance period beginning Thursday, January 1, 2009. For depository institutions that report quarterly, the new low reserve tranche and reserve requirement exemption amount will be effective for the seven-day reserve computation period beginning Tuesday, December 16, 2008, and for the corresponding seven-day reserve maintenance period beginning Thursday, January 15, 2009.

2. Deposit Reports

Section 11(b)(2) of the Federal Reserve Act authorizes the Board to require depository institutions to file reports of their liabilities and assets as the Board may determine to be necessary or desirable to enable it to discharge its responsibility to monitor and control the monetary and credit aggregates. The Board screens depository institutions each year and assigns them to one of four deposit reporting panels (weekly reporters, quarterly reporters, annual reporters, or nonreporters). The panel assignment for annual reporters is effective in June of the screening year; the panel assignment for weekly and quarterly reporters is effective in September of the screening year.

In order to ease reporting burden, the Board permits smaller depository institutions to submit deposit reports less frequently than larger depository institutions. The Board permits depository institutions with net transaction accounts above the reserve requirement exemption amount but total transaction accounts, savings deposits, and small time deposits below a specified level (the ''nonexempt deposit cutoff'') to report deposit data quarterly. Depository institutions with net transaction accounts above the reserve requirement exemption amount but with total transaction accounts, savings deposits, and small time deposits above the nonexempt deposit cutoff are required to report deposit data weekly. The Board requires certain large depository institutions to report weekly regardless of the level of their net transaction accounts if the depository institution's total transaction accounts, savings deposits, and small time deposits exceeds a specified level (the ''reduced reporting limit''). The nonexempt deposit cutoff level and the reduced reporting limit are adjusted annually, by an amount equal to 80 percent of the increase, if any, in total transaction accounts, savings deposits, and small time deposits of all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

From June 30, 2007 to June 30, 2008, total transaction accounts, savings deposits, and small time deposits at all depository institutions increased 5 percent (from $6,144 billion to $6,443 billion). Accordingly, the Board is increasing the nonexempt deposit cutoff level to $224.6 million for 2009. The Board is also increasing the reduced reporting limit to $1,258 million for 2009.[2]

Beginning in 2009, the boundaries of the four deposit reporting panels will be defined as follows. Those depository institutions with net transaction accounts over $10.3 million (the reserve requirement exemption amount) or with total transaction accounts, savings deposits, and small time deposits greater than or equal to $1,258 million (the reduced reporting limit) are subject to detailed reporting, and must file a Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900 report) either weekly or quarterly. Of this group, those with total transaction accounts, savings deposits, and small time deposits greater than or equal to $224.6 million (the nonexempt deposit cutoff level) are required to file the FR 2900 report each week, while those with total transaction accounts, savings deposits, and small time deposits less than $224.6 million are required to file the FR 2900 report each quarter. Those depository institutions with net transaction accounts less than or equal to $10.3 million (the reserve requirement exemption amount) and with total transaction accounts, savings deposits, and small time deposits less than $1,258 million (the reduced reporting limit) are eligible for reduced reporting, and must either file a deposit report annually or not at all. Of this group, those with total deposits greater than $10.3 million (but with total transaction accounts, savings deposits, and small time deposits less than $1,258 million) are required to file the Annual Report of Deposits and Reservable Liabilities (FR 2910a) report annually, while those with total deposits less than or equal to $10.3 million are not required to file a deposit report. A depository institution that adjusts

[1] Consistent with Board practice, the low reserve tranche and reserve requirement exemption amounts have been rounded to the nearest $0.1 million.

[2] Consistent with Board practice, the nonexempt deposit cutoff level has been rounded to the nearest $0.1 million, and the reduced reporting limit has been rounded to the nearest $1 million.

reported values on its FR 2910a report in order to qualify for reduced reporting will be shifted to an FR 2900 reporting panel.

Notice and Regulatory Flexibility Act. The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments prescribed by statute and by the Board's policy concerning reporting practices. The adjustments in the reserve requirement exemption amount, the low reserve tranche, the nonexempt deposit cutoff level, and the reduced reporting limit serve to reduce regulatory burdens on depository institutions. Accordingly, the Board finds good cause for determining, and so determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary. Consequently, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, do not apply to these amendments.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

■ 2. Section 204.9 is revised to read as follows:

§ 204.9 Reserve requirement ratios.

The following reserve requirement ratios are prescribed for all depository institutions, banking Edge and agreement corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement
Net transaction accounts:	
$0 to $10.3 million	0 percent of amount.
Over $10.3 million and up to $44.4 million	3 percent of amount.
Over $44.4 million	$1,023,000 plus 10 percent of amount over $44.4 million.
Nonpersonal time deposits	0 percent.
Eurocurrency liabilities	0 percent.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Monetary Affairs under delegated authority, September 25, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–22944 Filed 10–2–08; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

RIN 3245–AF79

Small Disadvantaged Business Program

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule, with request for comments.

SUMMARY: This rule changes the requirements relating to which firms may certify their status as small disadvantaged businesses (SDBs) for purposes of federal prime contracts and subcontracts. Currently, only those firms that have applied to and been certified as SDBs by SBA may certify themselves to be SDBs for federal prime and subcontracts. This rule allows firms to self-represent their status for subcontracting purposes without first receiving any SDB certification. It also recognizes that the benefits of being an SDB for federal prime contracts has been greatly diminished over the past years, and shifts the responsibility of identifying firms as SDBs for federal prime contracts to those limited agencies that have authority and chose to use price evaluation adjustments to SDBs.

DATES: *Effective Date:* This rule is effective October 3, 2008.

Comment Date: Comments must be received on or before November 3, 2008.

ADDRESSES: You may submit comments, identified by RIN: 3245–AF79, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail, for paper, disk, or CD/ROM submissions: Joseph Loddo, Associate Administrator, Office of Business Development, 409 Third Street, SW., Mail Code, Washington, DC 20416.
- Hand Delivery/Courier: Joseph Loddo, Associate Administrator, Office of Business Development, 409 Third Street, SW., Washington, DC 20416.

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

FOR FURTHER INFORMATION CONTACT: LeAnn Delaney, Deputy Director, Office of Business Development, at (202) 205–5852, or *LeAnn.Delaney@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 1207 of the 1987 Defense Authorization Act (Pub. L. 99–661, codified in 10 U.S.C. 2323) for the first time established a 5 percent goal for all Department of Defense (DOD) contracts to be awarded to SDBs. To achieve the 5 percent SDB goal, the statute authorized the award of contracts to SDBs using less than full and open competitive procedures. Specifically, DOD developed through regulation a practice known as the ''rule of two'' for SDBs. Pursuant to the ''rule of two,'' whenever a contracting officer identified two or more SDBs that it believed could perform a specific procurement at a fair and reasonable price, the contracting officer was required to set the contract aside for bidding exclusively among SDBs. In addition, SDBs would receive a 10% price evaluation adjustment in the evaluation of offers in an unrestricted or full and open competition. The DOD's SDB program was a self-certification program. SBA established eligibility criteria, but firms certified their SDB status for particular procurements. SBA

did, however, process protests and appeals relating to SDB status in connection with individual procurements.

In 1994, Congress extended the authority granted to DOD by 10 U.S.C. 2323 to all agencies of the Federal Government through enactment of the Federal Acquisition Streamlining Act (FASA), Public Law 103–355. However, as a result of the Supreme Court's decision in *Adarand Constructors, Inc.* v. *Peña,* 515 U.S. 200 (1995), President Clinton ordered the Department of Justice (DOJ) to work with Federal agencies to conduct a review of all race and gender conscious Federal contracting programs and implement necessary regulatory reforms to comply with the Court's ruling. Regulations to implement FASA were delayed until the completion of this review.

In 1996, DOJ completed its review and, on May 23, 1996, published in the **Federal Register** proposed reforms to these Federal preferential contracting programs. 61 FR 26042–6063. The ''rule of two'' and the corresponding SDB set-aside authority were put on hold pending further review. This left the price evaluation adjustment for SDBs on unrestricted or full and open competitions as the primary benefit for SDB contractors. The Department of Commerce was tasked with the responsibility to determine those industries in which a price evaluation adjustment could be used in Federal procurements. This included developing the methodology for determining the benchmark limitation and developing the methodology for calculating the size of the price evaluation adjustments for eligible industries.

DOJ also proposed governmental SDB certification for all firms seeking to submit offers as SDBs for Federal prime contracts and subcontracts. DOJ believed that a governmental certification would ensure that those who were receiving SDB benefits were truly SDB qualified in accordance with the standards established by SBA, and would readily meet the Adarand strict scrutiny test. The proposal included language that allowed procuring agencies to certify concerns as eligible for the SDB program, or ''In the alternative, an agency may enter into an agreement with SBA to have SBA make all determinations, including the initial determination of eligibility.'' *Id.* at 26044. Because of SBA's long-term experience in determining social and economic disadvantage for the 8(a) program and in connection with SDB protests, agencies were strongly encouraged to enter into an agreement with SBA. In August 1997 and June 1998, SBA published regulations, including standards and procedures, governing the SDB certification process.

On December 9, 2004, Congress allowed the price evaluation adjustment authority for SDBs to expire for the majority of Federal procuring agencies. Nevertheless, it remains in effect through 2009 for DOD, the National Aeronautics and Space Administration (NASA), and the Coast Guard. However, Section 801 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Public Law, 105–261, amended 10 U.S.C. § 2323(e) to prohibit DOD from using the SDB price evaluation preference if the Secretary determines at the beginning of the fiscal year that DOD achieved the SDB 5% goal in the most recent fiscal year for which data are available. DOD has met the 5% goal each year since. As such, DOD has not used the SDB price evaluation preference in DOD prime contracts since 1999. Data in the Federal Procurement Data System indicates that NASA and the Coast Guard rarely use the price evaluation adjustment.

Thus, at this point, only two agencies (NASA and the Coast Guard) are currently able to use the SDB price evaluation preference, and their use is minimal. Considering this, having SBA certify SDBs Government-wide for prime contracts is no longer the most efficient or effective way to certify firms. This rule removes SBA from the SDB certification process. In terms of prime contracts, the rule will have those procuring agencies that have an SDB prime contracts program certify firms as SDBs where the need to do so arises. In other words, if an agency uses the Price Evaluation Adjustment, then they should develop procedures for certifying SDBs. But in all other cases, agencies can rely on self-certification of SDBs. The rule recognizes that the approximately 9,545 firms currently participating in the 8(a) Business Development (BD) program are deemed certified SDB firms during their tenure in the 8(a) BD program. In addition, the approximately 2,814 SBA-certified SDB firms will remain as SDB certified firms for a period of three years from the date of their certifications where they continue to meet all applicable requirements. Finally, the rule gives procuring agencies that have an SDB prime contracts program the authority to accept SDB certifications made by private certifying entities and state and local governments where the procuring agencies believe that it is appropriate to do so. For all of these reasons, SBA does not believe that there will be a great burden on these procuring agencies to certify firms as SDBs for their programs.

The rule's effect of having procuring agencies make SDB certifications is consistent with one of the alternatives set forth in the 1996 DOJ SDB proposal. In order to make the transition smoother, SBA will conduct training seminars designed to instruct personnel from other agencies on the procedures for making eligibility determinations. This training component is also consistent with the DOJ proposal.

Moreover, as noted above, any firm seeking to represent itself as a SDB for a subcontract on a federal prime contract must currently also be certified as an SDB by SBA. Requiring certification for subcontracts is not required by law, and may contradict the express language of the Small Business Act. In this regard, § 8(d)(3)(F) of the Small Business Act, 15 U.S.C. 637(d)(3)(F), states: ''Contractors acting in good faith may *rely on written representations* by their subcontractors regarding their status as * * * a small business concern owned and controlled by socially and economically disadvantaged individuals * * *'' (Emphasis added). This language clearly suggests that Congress intended to allow large business prime contractors to rely on the self representations of subcontractors claiming to be SDBs.

SBA believes that the clear language of the Small Business Act should be adhered to. As such, SBA's regulatory change permits firms to self-represent their status as SDBs for subcontracts.

Specific Regulatory Changes

Section 124.1001 is amended to eliminate references to SBA performing SDB certifications. It also changes the provisions regarding which firms can certify their status as SDBs for both federal prime contracts and subcontracts on federal prime contracts. The rule eliminates the requirement that a firm must have received an SDB certification from SBA before it can represent itself to be an SDB. In order for a concern to represent that it is an SDB in order to receive a benefit as a prime contractor on a Federal Government procurement, the rule states that a firm must: (1) Be a current Participant in SBA's 8(a) BD program; (2) have been certified by SBA as an SDB within three years of the date it seeks to certify as an SDB; (3) have received certification from the procuring agency that it qualifies as an SDB; or (4) have submitted an application for SDB certification to the procuring agency and must not have received a negative determination regarding that application. For subcontracts, the rule permits a firm to represent that it

qualifies as an SDB if it believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals.

The rule eliminates current §§ 124.1003 through 124.1007 relating to Private Certifiers. When SBA first promulgated regulations implementing the Government-wide SDB program, SBA anticipated having entities called ''Private Certifiers'' to assist in processing SDB applications. The Private Certifier aspect of the SDB program never materialized. As such, there do not need to be regulations pertaining to them.

The rule moves the content of current § 124.1008, regarding how a firm becomes certified as an SDB, to § 124.1003. It also removes the elaborate procedures for applying to SBA (or a Private Certifier) to become certified as an SDB. While the procedures are eliminated from SBA's regulations, SBA expects that some of the substance would be preserved in any procedures developed by procuring agencies. For example, the provision requiring individuals who are not members of groups presumed to be socially disadvantaged to submit statements identifying personally how their entry into or advancement in the business world has been impaired due to their having one or more distinguishing features would be required by individual procuring agencies that process applications for SDB certification.

Section 124.1004 pertains to misrepresentations of SDB status, and evolves from current § 124.1011. On a prime contract, a firm that represents that it is an SDB will be deemed to have misrepresented its status as an SDB if it (1) is not currently a Participant in the 8(a) BD program; (2) did not receive an SBA SDB certification within three years of its representation; (3) has not received an SDB certification from the procuring agency, or has not applied to the procuring agency for SDB certification; or (4) has received a negative determination. For a subcontract, a misrepresentation will occur where there is not a good faith belief that the firm is owned and controlled by one or more socially and economically disadvantaged individuals. Any certification by a firm that SBA found not to qualify as an SDB in connection with an SDB protest or otherwise will be deemed a misrepresentation of SDB status if the firm has not overcome the reason(s) for the negative determination.

The rule also removes current sections 124.1012 and 124.1013. Because SBA will no longer certify firms as SDBs, provisions relating to firms reapplying to SBA after receiving a negative determination similarly will no longer be needed. In addition, other than its list of certified 8(a) firms, SBA will no longer maintain a list of certified SDB firms. As such, any references to such a list will be eliminated.

The substance of current §§ 124.1014 and 124.1016 is moved to §§ 124.1005 and 124.1006, respectively. Current § 124.1015 is removed as unnecessary.

Finally, under this rule, SBA continues to handle protests and appeals of SDB status in the same manner as it does currently. The protest procedures are similar to applying to SBA for SDB certification. SBA requires the same information and whatever forms or supporting materials deemed relevant. Current §§ 124.1017 through 124.1024 are redesignated as §§ 124.1007 through 124.1014, respectively. SBA's final decision in an SDB protest or appeal is binding on all interested parties. If for example a procuring agency had found a firm to qualify as an SDB and SBA, through an SDB protest or appeal, ruled that the firm did not qualify as an SDB, SBA's decision would overrule the procuring agency determination. In addition, if in connection with a protest SBA finds that a firm does not qualify as a SDB for a contract that has been awarded, the procuring agency cannot take SDB goaling credit for that contract.

II. Justification for Publication as Interim Final Status Rule

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act and SBA regulations. 5 U.S.C. 553 and 13 CFR 101.108. The Administrative Procedure Act provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations arise where an agency must issue a rule without public participation. SBA must cease performing SDB certifications as of September 30, 2008. If this rule is not effective before that date, SBA might risk a violation of the Anti-Deficiency Act. SBA does not receive any Congressional funding for processing applications for SDB certification, but instead seeks re-imbursement from those Federal Agencies that utilize SBA's certification in making SDB awards under the Economy Act, (31 U.S.C. 1535). Some of these top 20 procuring agencies have notified SBA that they will cease reimbursement for the SDB certification services as of September 30, 2008. The SDB Program is a statutory requirement for only two agencies, the Coast Guard and the NASA. Other Agencies have benefited from the SDB price evaluation preference in the past, but that law expired for most agencies in 2004. In order for an Agency to order and reimburse for services under the Economy Act, it must receive a benefit from those services. The benefit most procuring Agencies receive from the SDB certification services is minimal in their view, and some have notified SBA that they will not continue reimbursements in Fiscal Year 2009. Basically, the main residual benefit is for the procuring agencies to track their SDB goaling requirement in 15 U.S.C. 644(g)(1) (the SDB goal is 5 percent of all prime contract and subcontract awards for each fiscal year). The loss of so many paying agencies and the inability of SBA to use its own appropriations to make up for shortfalls, results in a lack of funding for a viable SDB certification program. SBA is unable to use its own funds to make up any shortfall because the SDB Program is not an SBA program; the SDB program is a government wide service that SBA agreed to provide under Economy Act through interagency shared funding in 1996. Therefore, SBA cannot provide these SDB certification services beyond the end of Fiscal Year 2008 using SBA appropriations.

SBA has 2,814 SDB firms other than 8(a) participants as eligible solely for SDB status. Without this Interim Final Rule, which will allow them to self-represent their SDB status in good faith to Agencies, there will be no way, after SBA ceases certification services, for Agencies to continue to meet their annual SDB goaling requirements or for any SDBs that are not certified to be considered for SDB procurements. It is critical that this rule be issued so these affected businesses can prepare for the self-representation process.

Accordingly, SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need. Advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest, as it would harm those small businesses seeking SDB procurements.

Any such delay would be extremely prejudicial to the affected businesses.

Although this rule is being published as an interim final rule, comments are hereby solicited from interested members of the public. These comments must be received on or before November 3, 2008. SBA may then consider these comments in making any necessary revisions to these regulations.

III. Justification for Immediate Effective Date of Interim Final Rule

The APA requires that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). SBA finds that good cause exists to make this final rule effective the same day it is published in the **Federal Register**.

The purpose of the APA provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. For the reasons set forth above in II, Justification of Publication of Interim Final Status Rule, SBA finds that good cause exists for making this interim final rule effective immediately, instead of observing the 30-day period between publication and effective date.

SBA is aware of many entities that will be assisted by the immediate adoption of this rule.

Compliance with Executive Orders 12866, 12988, 13175, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C., Ch. 35)

Executive Order 12866

OMB has determined that this rule is significant regulatory action for purposes of Executive Order 12866. OMB has also determined that this rule is not major under the Congressional Review Act.

Because this rule is a significant regulatory action, a Regulatory Impact Analysis, discussing the need, cost, benefits and alternatives to the rule is required.

1. Is there a need for this regulatory action?

Yes, there is a need for this regulatory action. Under the existing regulation, SBA is required to perform SDB certification services for other Agencies. 13 CFR s. 124.1001(c). In addition, the FAR defines an SDB as a small business that has received certification from SBA as a SDB consistent with 13 CFR 124, Subpart B. This Interim Final Rule is necessary since SBA must cease performing SDB certifications as of the end of Fiscal Year 2008 due to a lack of funding. By the time this Interim Final Rule has been published, SBA will have initiated a FAR case to make the conforming changes to the FAR. These changes will ensure that eligible SDBs will be able to continue to compete for SDB procurements that Agencies use to meet their SDB statutory goals, as well as use the SDB price evaluation preference for NASA and Coast Guard, by self-representing their SDB status. It may also open up other Agencies using either private SDB certifiers or establishing Agency-specific SDB programs. In addition, it will allow these SDBs to continue to participate in the Department of Transportation's (DOTs) Disadvantaged Business Enterprise Program, 49 CFR 26.5, which has relied upon the SBA and FAR SDBs status. Moreover, the SBA Office of Inspector General early on recognized that the current funding structure for the SDB Program is unreliable and unpredictable and that there was no legal basis that assured the other Agencies would continue funding the SDB Program. SBA OIG Audit Report No. 00–19, SDB Certification Program Obligations and Expenditures. Without continued interagency funding, SBA is unable to continue to support the existing rule process by certifying SDBs for the entire Federal Government.

2. What are the potential benefits and costs of this regulatory action?

Currently, SBA has certified only 2,814 firms other than 8(a) participants as eligible solely for SDB status. From FY 98 through FY 07 SBA has been reimbursed by procuring agencies over $27.5 million for these SDB certifications. The procuring agencies are obligated to reimburse SBA another $1.2 million in FY 2008, so total reimbursements from procuring agencies will exceed $28.7 million since FY 1998.

The SDB procurement goal achievement calculation includes 8(a) certified firms (9,994) and SDB certified firms (2,814). Firms certified as 8(a) are also considered to be SDB for statistical purposes. In FY 2005 Federal agencies reported SDB contracts awarded to SDBs totaling $21.7 billion. When 8(a) contract award dollars are subtracted, the contracts awarded to SDBs in dollars totaled $11.2 billion, of which DoD awarded $7.4 billion or 66%. DoD was successful in awarding this amount without the use of the SDB price evaluation adjustment. Based on conversations with the other Federal agencies, virtually all of the remaining SDB dollars, $3.8 billion, were awarded under full and open competition without the use of the SDB price evaluation adjustment. During this same period, the Federal Government exceeded the SDB 5% goal, reaching 6.92%.

The SDB certification process is time consuming and costly for many small businesses. During the past five years, the Federal Government has exceeded the statutory 5% SDB goal without the use of the SDB price evaluation adjustment. Eliminating SDB certification would have little negative impact on the SDB community as long as self-representation is allowed. Presently, there is minimal use of the SDB price evaluation adjustment at the Federal prime contract level. Specifically, Congress allowed the SDB price evaluation adjustment authority to expire on December 9, 2004 for all but two agencies. Authority for the two remaining agencies was reauthorized for another three years to 2009. However, for the most part these agencies are not using the price evaluation preference to meet the 5% SDB goal. Therefore, at the prime contract level, there is little or no benefit for a firm to expend substantial time and expense to obtain SDB certification.

Therefore, continuation of the existing SDB certification process is costly, time consuming and burdensome. As opposed to this, self-representation by firms of their status in good faith is cheaper, quicker and less burdensome. SBA will continue to provide an appeal process for contract protests and SDB status. Allowing firms to self represent at the subcontracting level appears to be consistent with Congressional intent.

3. What are the alternatives to this rule?

SBA has identified three separate alternatives to this rule: (1) Self-representation; (2) private certification, and (3) agency specific SDB certification programs.

We believe self-representation is supported by the relevant statute. In terms of subcontracting, § 8(d)(3)(F) of the Small Business Act, 15 U.S.C. 637(d)(3)(F), states: ''Contractors acting in good faith may *rely on written representations* by their subcontractors regarding their status as * * * a small business concern owned and controlled by socially and economically disadvantaged individuals, * * * '' (Emphasis added). This language suggests that Congress intended to allow large business prime contractors to rely on self certifications by companies claiming to be SDBs. Small business concerns would make the self-representation as an SDB in good faith and the determination would be subject

to SBA SDB protest and appeal procedures.

Private certifiers were contemplated under the existing SBA SDB regulations, but none were ever approved. 13 CFR 124.1003–.1009. However, the Private Certifier structure is available if an Agency wanted to go replicate or approximate those regulations and proceed with that option. Since a Private Certifier must be compensated by the Agency hiring them under contract, this option does require a procurement action and Agency funding and oversight.

Agency-specific SDB certification programs could also be established by interested Agencies. We believe this would require rulemaking and the commitment of Agency resources to creation and maintenance of each Agency's SDB program. SBA will also provide training and educational assistance on how to implement and administer a SDB certification program to any interested Agency.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of E.O. 13132, the SBA has determined that the rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132, Federalism, SBA determines that this Interim Final Rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13175, Tribal Summary Impact Statement

For the purposes of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, SBA has determined that this Interim Final Rule 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.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

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

Regulatory Flexibility Act, 5 U.S.C. 601–612

Because the rule is an interim final rule, there is no requirement for SBA to prepare an Initial Regulatory Flexibility Act (IRFA) analysis. The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an IRFA which describes whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA requires analysis of a rule only where notice and comment rulemaking are required. Rules are exempt from Administrative Procedure Act (APA) notice and comment requirements and therefore from the RFA requirements when the agency for good cause finds (and incorporates the finding and a brief statement of reasons in the rules issued) that notice and public procedure thereon is impracticable, unnecessary, or contrary to the public interest. In this case it would be contrary to the public interest to delay the promulgation of the rule.

List of Subjects in 13 CFR Part 124

Administrative practice and procedure, Government procurement, Hawaiian Natives, Indians—business and finance, Minority businesses, Reporting and recordkeeping requirements, Technical assistance.

■ For the reasons stated in the preamble, the Small Business Administration amends title 13 CFR part 124 as follows:

PART 124—8(A) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

Subpart B—Eligibility and Protests Relating to Federal Small Disadvantaged Business Programs

■ 1. The authority citation for part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Public Law 99–661, Public Law 100–656, sec. 1207, Public Law 101–37, Public Law 101–574, section 8021, Public Law 108–87, and 42 U.S.C. 9815.

■ 2. Revise § 124.1001 to read as follows:

§ 124.1001 General applicability.

(a) This subpart defines a Small Disadvantaged Business (SDB). It also establishes procedures by which SBA determines whether a particular concern qualifies as an SDB in response to a protest challenging the concern's status as disadvantaged. Unless specifically stated otherwise, the phrase ''socially and economically disadvantaged individuals'' in this subpart includes, Indian tribes, ANCs, CDCs, and NHOs.

(b) In order for a concern to represent that it is an SDB in order to receive a benefit as a prime contractor on a Federal Government procurement, it must:

(1) Be a current Participant, as defined in § 124.3 of this part, in SBA's 8(a) BD as described in § 124.1 of this part, program;

(2) Have been certified by SBA as an SDB within three years of the date it seeks to certify as an SDB;

(3) Have received certification from the procuring agency that it qualifies as an SDB; or

(4) Have submitted an application for SDB certification to the procuring agency and must not have received a negative determination regarding that application.

(c) A firm may represent that it qualifies as an SDB for any Federal subcontracting program if it believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals.

■ 3. Revise §§ 124.1003 through 124.1006 to read as follows:

§ 124.1003 How does a firm become certified as an SDB?

(a) All firms that are current Participants in SBA's 8(a) BD program are automatically deemed to be certified SDBs.

(b) Any firm seeking to be certified as an SDB in order to represent that it qualifies and is eligible to obtain a benefit on a federal prime contract as an SDB may apply to the procuring agency for such certification.

(c) A procuring agency may accept a certification from another entity (*e.g.*, a private certifying entity, or a state or local government) that a firm qualifies as an SDB if the agency deems it appropriate.

§ 124.1004 What is a misrepresentation of SDB status?

(a) Any person or entity that misrepresents a firm's status as a ''small business concern owned and controlled by socially and economically disadvantaged individuals'' (''SDB status'') in order to obtain an 8(d) or

SDB contracting opportunity or preference will be subject to the penalties imposed by section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as well as any other penalty authorized by law.

(b)(1) A representation of SDB status on a federal prime contract will be deemed a misrepresentation of SDB status if the firm does not meet the requirements of § 124.1001(b).

(2) A representation of SDB status on a subcontract to a federal prime contract will be deemed a misrepresentation of SDB status if the firm does not have a good faith belief that it is owned and controlled by one or more socially and economically disadvantaged individuals. Any certification by a firm that SBA found not to qualify as an SDB in connection with an SDB protest or otherwise will be deemed a misrepresentation of SDB status if the firm has not overcome the reason(s) for the negative determination.

(3) Any representation of SDB status by a firm that SBA has found not to qualify as an SDB in connection with a protest or SBA-initiated SDB determination will be deemed a misrepresentation of SDB status if the firm has not overcome the reason(s) set forth in SBA's written decision.

§ 124.1005 How long does an SDB certification last?

(a) A firm that is certified to be an SDB will generally be certified for a period of three years from the date of the certification.

(b) A firm's SDB certification will extend beyond three years where SBA finds the firm to be an SDB:

(1) In connection with a protest challenging the firm's SDB status (*see* § 124.1013(h)(2));

(2) In connection with an SBA-initiated SDB determination (*see* § 124.1006); or

(3) As part of an 8(a) BD annual review.

(c) A firm that completes its nine-year program term in the 8(a) BD program will continue to be deemed a certified SDB firm for a period of three years from the date of its last 8(a) annual review.

§ 124.1006 Can SBA initiate a review of the SDB status of a firm claiming to be an SDB?

SBA may initiate an SDB determination on any firm that has been certified to be an SDB by a procuring agency or that has represented itself to be an SDB on a subcontract to a federal prime contract whenever it receives credible information calling into question the SDB status of the firm. Upon its completion of an SDB determination, SBA will issue a written decision regarding the SDB status of the questioned firm. If SBA finds that the firm continues to qualify as an SDB, the determination remains in effect for three years from the date of the decision.

■ 3. Remove §§ 124.1007 through 124.1016 and redesignate §§ 124.1017 through 124.1024 as §§ 124.1007 through 124.1014, respectively.

Sandy K. Baruah,

Acting Administrator.

[FR Doc. E8–23472 Filed 10–2–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 734, 738, 740, 742, 744, 746, 748, 750, 762, 770, 772, and 774

[Docket No. 080211163–81224–01]

RIN 0694–AE18

Encryption Simplification

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the Export Administration Regulations (EAR) to make the treatment of encryption items more consistent with the treatment of other items subject to the EAR, as well as to simplify and clarify regulations pertaining to encryption items. The restrictions pertaining to technical assistance by U.S. persons with respect to encryption items are removed, because the current export and reexport restrictions set forth in the EAR for technology already include technical assistance. This rule also removes License Exception KMI as it has become obsolete because of developments in uses of encryption. In addition, this rule removes notification requirements for items classified as 5A992, 5D992, and 5E992. This rule also increases certain parameters under License Exception ENC, which is intended to reflect advances in technology. This rule adds two new review and reporting requirement exclusion paragraphs under License Exception ENC for wireless ''personal area network'' items and for ''ancillary cryptography'' items. This rule also adds Bulgaria, Canada, Iceland, Romania, and Turkey to the list of countries that receive favorable treatment under License Exception ENC. Commodities and software pending mass market review may no longer be exported under ECCNs 5A992 and 5D992 using No License Required (NLR). However, once the mass market review has been received by BIS, then such commodities and software may be exported using License Exception ENC under ECCNs 5A002 and 5D002. This rule will reduce the paperwork burden on the public by 9% (annual dollar amount savings of approximately $14,000 to the public and $5,000 to the U.S. Government), because of the removal of certain notification requirements, addition of countries to the list of those receiving favorable treatment under License Exception ENC, and the increase of reporting and review requirement exclusions. The Departments of Commerce, State and Defense will continue to review export control, license review policies, and license exceptions for encryption items in the EAR.

DATES: *Effective Date:* This rule is effective October 3, 2008.

ADDRESSES: Written comments on this interim final rule may be sent by e-mail to *publiccomments@bis.doc.gov*. Include ''Encryption rule'' in the subject line of the message. Comments may also be submitted by mail or hand delivery to Sharron Cook, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: Encryption rule; or by fax to (202) 482–3355.

FOR FURTHER INFORMATION CONTACT: For questions of a general nature contact Sharron Cook, Office of Exporter Services, Regulatory Policy Division at (202) 482–2440 or E-Mail: *scook@bis.doc.gov*.

For questions of a technical nature contact: The Information Technology Division, Office of National Security and Technology Transfer Controls at 202–482–0707 or E-Mail: C. Randall Pratt at *cpratt@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Steps Regarding Scope of the EAR

This rule revises paragraph 732.2(b) of the EAR, which sets forth instructions on how to determine if your technology or software is publicly available, by adding mass market encryption software with symmetric key length exceeding 64-bits classified under ECCN 5D992. The addition of this phrase harmonizes with the scope of publicly available encryption software that is considered to be subject to the EAR because of the criteria set forth in § 734.3(b)(3) of the EAR.

Items Subject to the EAR

This rule adds a note to paragraph 734.3(a)(4) of the EAR, which sets forth the items that are subject to the EAR. The note reminds readers that certain foreign-manufactured items are subject to the EAR when developed or produced from U.S.-origin encryption items that were exported pursuant to § 740.17(a) of License Exception ENC.

Clarification of Text

This rule replaces the phrase ''encryption software (including source code) transferred from the U.S. Munitions List to the Commerce Control List consistent with E.O. 13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date'' with ''software controlled for ''EI'' reasons under ECCN 5D002 on the Commerce Control List'' to clarify which software this sentence is referring to in the introductory paragraph of Supplement No. 1 to part 734 ''Questions and Answers—Technology and Software subject to the EAR.''

Determining Whether a License Is Required

This rule clarifies text in § 738.4(a)(1) of the EAR that not all license requirements set forth under the ''License Requirements'' section of an ECCN refer to the Commerce Country Chart, but in some cases this section will contain references to a specific section in the EAR that contain license requirements for that particular ECCN. In such cases, you could not determine whether a license is required based on the ECCN and Country Chart alone and section § 738.4(a)(1) of the EAR would not apply. For example, ''EI'' controls are not included in the Country Chart; however licensing requirements for ''EI'' controlled items are included in § 742.15(a) of the EAR. In addition, this rule removes the reference in § 738.4(a)(2)(ii)(B) to notification requirements described in paragraph 742.15(b) for items classified under ECCNs 5A992, 5D992, and 5E992, because this rule removes notification requirements for these items. This rule also clarifies the reminder about the review requirements for certain mass market encryption items under ECCNs 5A992 and 5D992, by removing the reference to 5E992 and harmonizing the citation reference with the changes in this rule.

License Exception LVS

This rule revises § 740.3(d)(5) to clarify that not only exports, but reexports of encryption components or spare parts are subject to the special restriction in this paragraph. In addition, the term ''item'' has been replaced by correct terminology.

License Exception KMI

This rule removes § 740.8 of the EAR ''License Exception KMI'' as it has become obsolete because of the developments in the use of encryption. A consequential revision is also made to § 746.3(c) of the EAR, where License Exception KMI was listed. Products previously eligible for License Exception KMI will be accorded equivalent treatment under license or license exception. As a result of this change, this rule also removes Supplement No. 4 to part 742 ''Key Escrow or Key Recovery Products Criteria.''

License Exception TSU

In § 740.13(d) of the EAR, this rule removes the quotation marks around the term ''mass market'' in the title to paragraph (d), paragraph (d)(1), footnote 1, paragraph (d)(3)(i) and paragraph (d)(3)(ii), because in the EAR double quotation marks around a term indicate that the word is defined in part 772 of the EAR, and mass market is not a defined term in part 772 of the EAR.

License Exception ENC

This rule revises § 740.17 of the EAR by reformatting paragraphs, removing redundant text, and clarifying text as needed. This rule revises the title of this section to indicate that this license exception also authorizes technology. The introductory paragraph to § 740.17 of the EAR is condensed to set forth the scope of § 740.17 of the EAR and include information not found elsewhere in § 740.17 of the EAR.

While this rule reformats the paragraphs in § 740.17 of the EAR, it was BIS's goal to minimize revisions to the enumeration of paragraphs used to classify encryption items in the past, so as to alleviate confusion about previous classifications provided by BIS that reference specific paragraphs and to reduce the number of revisions to industry's current product matrices. That being said, the paragraph titles have been revised to reflect review request requirements instead of destinations, end-uses, or types of end-users.

This rule removes paragraphs 740.17(a)(2) and (b)(2)(i) that exempted commodities and software from review requirements based on a previous review by the U.S. Government prior to October 19, 2000. These commodities and software remain exempt from review requirements, and BIS did not see the necessity of retaining such text in the Export Administration Regulations.

Paragraph 740.17(a) now describes exports and reexports authorized by License Exception ENC that do not require prior government review or post export reporting. The former paragraph (a)(2) ''Items previously reviewed by the U.S. Government'' is removed by this rule, as this paragraph is no longer necessary because of the passage of time. Former paragraph (a)(3) for end-uses other than internal development is moved to new paragraph (b)(1), because a review request submission is required for eligibility under this paragraph. Former paragraph (b)(1) for U.S. subsidiaries is moved to (a)(2), because authorization under this paragraph does not require prior review. In addition, this rule amends former paragraph (b)(4)(i)(A) (exempting encryption items not exceeding certain key lengths from the 30 day waiting period) by moving it to (b)(1)(ii)(A).

Section 740.17(a)(1)

This rule removes references in paragraph § 740.17(a)(1) to ''technical assistance described in § 744.9 of the EAR,'' because this rule removes 744.9, see explanation set forth below under ''§ 744.9.'' This rule clarifies text in paragraph (a)(1) so that it is understood that License Exception ENC can be used for not only internal development, but also internal production of new products.

Section 740.17(a)(2)

Paragraph 740.17(a)(2) is former paragraph (b)(1).

Section 740.17(b)

Paragraph 740.17(b) now sets forth those items authorized under License Exception ENC that require prior review by the U.S. Government. This paragraph also sets forth the ''open cryptographic interface'' restriction that applies to all paragraphs in 740.17(b), except for paragraph § 740.17(b)(1)(i). This introductory paragraph also sets forth the restriction to export or reexport cryptanalytic items to any ''government end-user.'' There is also a reference in this paragraph to paragraph (e) ''reporting requirements'' for exports and reexports under § 740.17(b).

Section 740.17(b)(1)

The new paragraph 740.17(b)(1) of the EAR authorizes exports and reexports under License Exception ENC that require prior government review, but allows the export or reexport to take place immediately upon registration of the review request with BIS.

Paragraph (b)(1)(i) authorizes the export and reexport of encryption items, including EI controlled commodities or software (excluding source code) that are pending review for mass market treatment (under § 742.15(b) of the EAR), to ''government end-users'' and non-''government end-users'' located in the countries listed in Supplement 3 of part 740, as well as to foreign subsidiaries or offices of firms, organizations and governments headquartered in countries listed in Supplement 3 of part 740. This rule adds authorization under License Exception ENC for items pending mass market review, because it was not logical to temporarily classify commodities and software under ECCNs 5A992 or 5D992 that were pending mass market review under paragraph 742.15(b) and authorize export or reexport under the designation of ''No License Required (NLR)'' when the possible outcome of the BIS classification of the commodities and software could be ECCN 5A002 or 5D002.

New paragraph 740.17(b)(1)(ii) authorizes exports and reexports of specified encryption commodities and software to countries not listed in Supplement No. 3 to part 740. This rule revises the format of the parameters in this section from a range to an upper limit in paragraph (b)(1)(ii)(A), former paragraph (b)(4)(i)(A). In addition, the upper limit for symmetric algorithms has been raised from ''key lengths not exceeding 64 bits'' to ''key lengths not exceeding 80 bits.'' After review has been completed on these commodities or software, BIS will issue a CCATS that will indicate authorization is under paragraph (b)(2) or (b)(3) of § 740.17 of the EAR, whichever paragraph is appropriate.

Paragraph (b)(1)(ii)(B), former paragraph (b)(4)(i)(B), authorizes exports and reexports of encryption source code that would not be eligible for export or reexport under License Exception TSU, provided that a copy of the source code is included in the review request, to non-''government end-users'' located in any country except a country listed in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. After the review has been completed, BIS will issue a CCATS that will indicate authorization is under paragraph 740.17(b)(2) of the EAR. The text is clarified by replacing the phrase ''considered publicly available'' with ''eligible'' in order to avoid confusion about the scope of encryption source code eligible under this paragraph.

Section 740.17(b)(2)

Paragraph (b)(2) of License Exception ENC authorizes exports and reexports to non-''government end-users'' located in a country not listed in Supplement No. 3 to this part or Country Group E:1 that require a prior review and 30 day waiting period. Pursuant to the new scope paragraph 740.17(b), this rule expands the scope of (b)(2) to include ECCN 5B002 to be consistent with commodities and software eligible for License Exception ENC under paragraphs (b)(1) and (b)(3) of the EAR. In addition, former paragraph (b)(2)(i) concerning transactions previously reviewed prior to October 19, 2000 by the U.S. Government is removed as the passage of time has made this paragraph unnecessary. Former paragraph (b)(2)(ii) that set forth the review request requirement is removed, as the review request requirement has been moved to the introductory text of paragraph (b)(2). Former paragraph (b)(2)(iii) is replaced by the introductory text of paragraph (b)(2).

This rule revises new paragraph (b)(2)(i), (Network infrastructure software and commodities) by adding ''digital packet telephony/media (voice/video/data) over internet protocol'' to the list of capabilities described.

Also in this new paragraph (b)(2)(i), the former paragraph (b)(2)(iii)(A) reference to ''64 bits for symmetric algorithms'' is changed to ''80 bits for symmetric algorithms'', commensurate with the key length change in new paragraph (b)(1)(ii)(B). (Note: Regarding key length with respect to the authorizations and restrictions set forth in both the current and former versions of License Exception ENC § 740.17(b)(2), only 'network infrastructure' commodities and software (sub-paragraph (i) in this rule) are distinguished by key length. All encryption commodities and software now enumerated in sub-paragraphs (ii)–(vi) (former sub-paragraphs (iiii)(B)–(iii)(F)) of License Exception ENC paragraph (b)(2) are controlled to ''government end-users'' as described, regardless of key length.)

Former paragraph (b)(2)(iii)(A)(1), new paragraph § 740.17(b)(2)(i)(A) is clarified by this rule to add quotes around the term ''government end-user(s)'' and now reads as follows, ''Been designed, modified, adapted or customized for ''government end-user(s)'' or government end-use (e.g., to secure police, state security, or emergency response communications).''

This rule further revises former paragraph (b)(2)(iii)(A)(1), new paragraph (b)(2)(i)(A), which addresses aggregate encrypted WAN, MAN, VPN or backhaul throughput, by increasing the parameter from 44 Mbps to 90 Mbps.

This rule further revises former paragraph (b)(2)(iii)(A)(2), new paragraph (b)(2)(i)(B). The Wire (line), cable or fiber optic WAN, MAN or VPN single-channel input data rate is revised from ''44 Mbps'' to ''154 Mbps.''

These revisions are not expected to result in a decrease in the number of license applications submitted for exports and reexports of items described in paragraph (b)(2) to government end-users. Most network infrastructure items currently being exported to government end-uses exceed these performance parameters. However, BIS has determined that the parameters should be adjusted in recognition of technology advances, and to avoid maintaining controls on legacy systems.

This rule replaces the ''Maximum number of concurrent encrypted data tunnels or channels * * *'' parameter in former paragraph (b)(2)(iii)(A)(3), new paragraph (b)(2)(i)(C) with ''Media (voice/video/data) encryption or centralized key management supporting more than 250 concurrent encrypted data channels, or encrypted signaling to more than 1,000 endpoints, for digital packet telephony/media (voice/video/data) over internet protocol communications.'' These amendments update these provisions of License Exception ENC to reflect advances in encryption technology. Specifically, these amendments address cryptographic developments in Datagram Transport Layer Security (DTLS)—Secure Real-Time Transport Protocol (SRTP), and encrypted communications signaling, for large Voice over Internet Protocol (VoIP) network infrastructures.

This rule also revises former paragraph (b)(2)(iii)(A)(4)(i), new paragraph (b)(2)(i)(D)(1), which addresses Air-interface coverage capabilities, by changing ''maximum data rates'' to ''maximum transmission data rates'' and changing the parameter from ''5 Mbps'' to ''10 Mbps.'' By limiting this License Exception ENC provision to the transmit (upstream) data rates and doubling the licensing threshold, these amendments reflect technology developments for certain satellite and other long-range wireless devices.

Former paragraph (b)(2)(iii)(B) that addressed encryption source code that would not be eligible for export or reexport under License Exception TSU is moved to new paragraph (b)(2)(ii), but also appears in new paragraph (b)(1)(ii)(B) for review requests that include a copy of the source code, and

may be exported or reexported without a waiting period under License Exception ENC when the review request is registered with BIS.

Former paragraph (b)(2)(iii)(C), new paragraph (b)(2)(iii) is revised by removing the reference to the open cryptographic interface restriction, because this restriction is now placed in the introductory text of paragraph 740.17(b).

Former paragraph (b)(2)(iii)(C)(1), new paragraph (b)(2)(iii)(A) is amended by revising the phrase ''Been modified or customized for'' to read ''been designed, modified, adapted or customized for.'' Quotes have been added around the term ''government end-user(s)'' to indicate that this term is defined in part 772 of the EAR.

This rule also revises the phrase ''to secure departmental, police, state security, or emergency response communications'' to read ''to secure police, state, security, or emergency response communications, including encryption commodities and software for external Security Operations Center (SOC)/Network Operations Center (NOC) command and infrastructure, and digital forensics/computer forensics.'' With this clarification, this rule provides examples of three such systems that are controlled for their inherent government end-use: External Security Operations Center (SOC)/Network Operations Center (NOC) command and infrastructure; public safety radio (e.g., implementing Terrestrial Trunked Radio (TETRA) and/or Association of Public-Safety Communications Officials International (APCO) Project 25 (P25) standards); and digital forensics/computer forensics.

Note: Regarding the use of encryption by a computer forensics/digital forensics commodity or software (e.g., for securing the collection, examination, and/or reporting of data or metadata on an investigated computer), such digital/computer forensics tools would not be considered ''cryptanalytic items'' if the only use of ''cryptography'' is for encryption. However, such tools that also perform ''cryptanalysis'' (e.g., cracking passwords or employing other cryptanalytic techniques to derive user-encrypted data or metadata from a computer or network) would be controlled as ''cryptanalytic items.''

Former paragraph (b)(2)(iii)(E), new paragraph (b)(2)(v) is revised by adding a clarifying phrase after the term ''quantum cryptography'' to read ''as defined in ECCN 5A002 of the Commerce Control List.''

Former paragraph (b)(2)(iii)(F), new paragraph (b)(2)(vi) is revised by replacing the term ''controlled'' with ''classified under'' to clarify the scope of computers in this paragraph.

Section 740.17(b)(3)

This rule revises paragraph § 740.17(b)(3) of the EAR for export or reexport of commodities and software not listed in § 740.17(b)(2) of the EAR by both ''government end-users'' and non-''government end-users'' by removing the redundant former paragraph (b)(3)(ii)(B) that explained the review procedures and instead inserting a reference to paragraph § 740.17(d) that sets forth these procedures. In addition, former paragraph (b)(3)(ii)(A) concerning transactions previously reviewed by the U.S. Government is removed as the passage of time has made this paragraph unnecessary. Former paragraph (b)(3)(i)(A) that set forth the ineligibility of commodities and software that provide an ''open cryptographic interface'' is removed because this restriction is set forth in the introductory text of paragraph 740.17(b). This rule adds text that clarifies the eligible locations of the end-users, because 740.17(a) addresses all exports to Supplement No. 3 countries. This rule relocates the restriction in former paragraph (f)(1) concerning ''cryptanalytic items'' to the introductory text of paragraph (b)(3).

Section 740.17(b)(4)

Former paragraph 740.17(b)(4)(i), setting forth commodities and software that are eligible for export immediately upon registration of a review request, is moved to new paragraph (b)(1)(ii). In addition, previous paragraph 740.17(b)(4)(ii), setting forth exclusions from review requirements for certain items, is reformatted as paragraph 740.17(b)(4).

Former paragraph (b)(4)(ii)(A) for short-range wireless encryption is now in new paragraph (b)(4)(i). This rule adds examples to this paragraph of short-range wireless commodities and software. An informative sentence is also added to notify the reader that certain items excluded by this paragraph may also be excluded from review under (b)(4)(iii) (personal area networks) or (b)(4)(iv) (commodities and software that provide ''ancillary cryptography'').

Former paragraph (b)(4)(ii)(B) is replaced by the third, fourth, and fifth sentences of former paragraph (c), which pertains to foreign products developed with or incorporating U.S.-origin encryption source code, components, or toolkits.

This rule adds two new review requirement exclusion paragraphs. The first new paragraph (b)(4)(iii) is for wireless ''personal area network'' items. This rule adds the term ''personal area network'' and definition, as well as examples to part 772. The other new exclusion paragraph (b)(4)(iv) is for ''ancillary cryptography,'' which is also a newly added term/definition in part 772. The term/definition includes examples of ''ancillary cryptography.'' The U.S. Government has determined that it is not necessary to review the encryption functionality of such items.

Reexports and Transfers

This rule clarifies the second sentence in § 740.17(c) of the EAR (restricted transfers) by adding quotes around the term ''government end-users'' for consistency. The third and fourth sentences in this section concerning foreign products developed with or incorporating U.S.-origin encryption products are moved to new paragraph (b)(4)(ii), because it was misplaced and redundant to text already included in another paragraph of License Exception ENC.

Review Request Procedures

This rule removes former paragraph (d)(1) ''Instructions for requesting review'' because these instructions were redundant and inconsistent with the instructions for submissions on Form BIS–748P (Multipurpose Application) found in Part 748 of the EAR. Instructions for such submissions belong in Part 748 of the EAR.

This rule reformats former paragraph (d)(2) ''Action by BIS'' because this paragraph was entirely too long and needed to be divided by subject matter. The new subparagraph titles are: (i) Notification; (ii) After 30 days; and (iii) Hold Without Action (HWA).

This rule moves former paragraph (d)(3), ''key length increases,'' to the reporting requirement section under new paragraph (e)(2), because this requirement is in actuality a reporting requirement and not a review requirement. This report is required for commodities and software that, after having been reviewed and authorized for License Exception ENC by BIS, are modified only to upgrade the key length used for confidentiality or key exchange algorithms. This rule also makes the new key length a required element of the report.

Reporting Requirements

The reporting requirements for License Exception ENC are now split into two sections: Semiannual reporting requirement and reporting key length increases. This rule clarifies that the Commodity Classification Automated Tracking System (CCATS) number is a required element of the report. This rule removes former paragraph (e)(2)(iv),

which required a report for exports of ECCN 5E002 items to be used for technical assistance that are not released by 744.9, because this rule removed section 744.9 of the EAR. This rule also clarifies the purpose and scope of paragraph (e)(3), regarding reportable information on foreign manufacturers and products that use encryption items in countries not listed in Supplement No. 3 to part 740.

Reporting Exclusions

This rule revises the exclusion set forth in former paragraph (e)(4)(i), new paragraph (e)(1)(iii)(A), by removing the reference to paragraph (b)(1), because (b)(1) did not require prior review or post export reporting, therefore this rule moved (b)(1) to new paragraph (a)(2).

In new paragraph (e)(1)(iii)(F), this rule expands the exclusion that was in former paragraph (e)(4)(vi) for components limited to providing short-range wireless encryption functions, by making the reporting exclusion apply to all of the items in the new paragraph (b)(4), which are those items that are excluded from review requirements (certain commodities and software that provide short-range wireless; foreign products developed with or incorporating U.S.-origin encryption source code (that have not entered United States for subsequent export), components, or toolkits; wireless ''personal area network'' items; and ''ancillary cryptography'' commodities and software).

Lastly, in new paragraph (e)(1)(iii)(J), this rule adds a new provision to exclude from reporting requirements exports of items that have been determined, on a case-by-case basis do not require the burden of semi-annual reporting. Certain exports of items that do not qualify for mass market treatment, but are authorized under License Exception ENC are not of interest for national security reasons, therefore do not warrant reporting requirements. Exporters will be notified of this exclusion on issued Commodity Classification Automated Tracking System (CCATS) documents.

Restrictions

Former paragraph § 740.17(f) ''Restrictions'' is removed, because the restrictions that were in this paragraph are integrated into the introductory paragraph to § 740.17 or specific paragraphs for which they apply.

Supplement No. 3 to Part 740

This rule revises the title of Supplement No. 3 to part 740 to read ''License Exception ENC Favorable Treatment Countries,'' because the former title of ''Countries Eligible for the Provisions of § 740.17(a)'' is no longer correct, as these countries are now eligible for provisions of § 740.17(b)(1) of the EAR. This rule adds Bulgaria, Canada, Iceland, Romania, and Turkey to the list of countries in Supplement No. 3 to part 740 of the EAR. Bulgaria and Romania joined the European Union by accession on January 1, 2007. The addition of Canada is simply for clarity, as licenses are not required to Canada for Encryption Items (pursuant to § 742.15(a)(1)) and License Exception ENC has been available for subsidiaries and offices of the Canadian government and private-sector end-users (along with the previous Supplement No. 3 to part 740 list of countries). Turkey and Iceland are added because they are members of the North Atlantic Treaty Organization (NATO). This will increase eligibility under License Exception ENC under new paragraphs § 740.17(a)(1) and (b)(1) of the EAR, which will decrease the necessity for submitting license applications, review requests, and semiannual reports.

This revision will reduce the number of license applications submitted to BIS for the export or reexport of encryption products classified under ECCNs 5A002 and 5D002 to Bulgaria, Iceland, Romania, and Turkey by 95 percent (approximately $37 million in exports and reexports for CY 2007). This revision will not change the amount of license applications received by BIS for the export or reexport of encryption products to Canada, because Canada, while not included in the list of countries that received favorable treatment under License Exception ENC, already received such benefits.

Section 742.15 ''Encryption Items''

Paragraph 742.15(a) is revised by more specifically describing what is EI controlled under ECCNs 5A002, 5D002, and 5E002. This revision harmonizes with changes this rule makes to the license requirements paragraphs of these ECCNs. In addition, a sentence is added that advises exporters to review License Exception ENC prior to submitting a license to BIS. Also, the phrase ''on a computer system'' is removed from the introductory text of § 742.15 in order to be more consistent with the first Note in the License Requirement section of ECCN 5D002.

Section 742.15(a)(2) License Requirements and Review Policy for ECCNS 5A992, 5D992, and 5E992

This rule removes former paragraph 742.15(a)(2), which explained license requirements and review policy for items classified under ECCNS 5A992, 5D992, and 5E992, because the purpose of § 742.15 is to set forth the license requirements and review policies for items controlled for encryption item (EI) reasons and these items are controlled for anti-terrorism (AT) reasons only. The license requirements and review policy for these items are found under appropriate anti-terrorism sections of part 742.

This rule removes the second sentence of 742.15(a)(2), because the indefinite language did not add to the transparency of licensing policy. The sentence stated, ''Exports and reexports of encryption items to governments, or to Internet and telecommunications service providers for the provision of services specific to governments, may be favorably considered.'' This rule removes the extraneous phrase ''including those which authorize exports and reexports of encryption technology to strategic partners (as defined in § 772.1 of the EAR) of U.S. companies.'' To be more transparent, this rule adds the phrase ''or pre-shipment notification'' to explain that ELAs may require pre-shipment notification. This rule adds a note to paragraph (a)(2) to remind exporters that once mass market encryption commodities and software have been reviewed by BIS and the ENC Encryption Request Coordinator (Ft. Meade, MD) and released from ''EI'' and ''NS'' controls pursuant to § 742.15(b) of the EAR, they are classified under ECCN 5A992 and 5D992 respectively, and are thereafter outside the scope of this section.

This rule removes the notification and review requirements for items classified under ECCNs 5A992, 5D992, and 5E992, which were set forth in former paragraphs § 742.15(b) introductory paragraph and § 742.15 (b)(1) of the EAR.

This rule adds a reference to the ENC Encryption Request Coordinator (FT. Meade, MD) with regard to the requirement for review of mass market encryption commodities and software.

Specific instructions for how to fill out form 748P (multipurpose application) for submission of a review request has been removed, because these instructions were redundant and inconsistent with the instructions found in paragraph (r) of Supplement No. 2 to part 748 of the EAR. Instead, a reference to this paragraph (r) is added to new paragraph 742.15(b)(1) ''Procedures for requesting review.''

This rule removes former paragraph (b)(2)(iii) that provided authorization under the designation of ''no license required (NLR)'' for exports and reexports of encryption commodities

and software pending mass market treatment review by BIS to government and non-government end-users located in countries listed in Supp. No. 3 to part 740 of the EAR or for internal use of foreign subsidiaries or offices of firms, organizations and governments headquartered in Canada or in countries listed in Supp. No. 3 to part 740 of the EAR. This authorization was based on a temporary classification under ECCNs 5A992 and 5D992, which is inconsistent with the way other items are classified in the EAR, therefore this provision is removed. Instead, encryption commodities and software will remain under the classification of ECCN 5A002 and 5D002 until 30 days have passed since registration of the submitted review request or BIS issues a classification under ECCN 5A992 or 5D992. However, this rule creates a new authorization under License Exception ENC for such commodities and software pending a decision by BIS concerning mass market treatment under new paragraph 740.17(b)(1) of the EAR. This rule adds explanatory text about this new procedure in (b)(2) ''Action by BIS.''

Section 742.15(b)(3) Exclusions for Notification and Review Requirements

This rule removes the former exclusion paragraphs, because it is no longer applicable and is replaced by new exclusion paragraphs from mass market review requirements under § 742.15(b). There are three new exclusions: Certain short range wireless commodities and software, wireless ''personal area network'' items, and ''ancillary cryptography'' commodities and software.

Section 742.15(b)(4) Dormant Encryption and Enabling Software and Commodities

This rule condenses this paragraph to remove text that pertained to ECCNs 5A992 and 5D992.

Section 742.15(b)(5) Examples of Mass Market Software

The phrase ''designed for, bundled with, or pre-loaded on single CPU computes'' is revised to read ''designed for computers classified as ECCN 4A994 or EAR99.'' This phrase was changed to remove outdated and confusing text related to computers. This rule also removes the last phrase ''and commodities and software exported via free or anonymous downloads.'' This phrase was removed because it confused the public, in that it led people to believe that if they incorporated free encryption software or open source encryption into their products that it was not subject to the EAR, which is not the case.

Supplement No. 6 to Part 742 ''Guidelines for Submitting Review Requests for Encryption Items''

The option to fax support documents is removed, because that method has been replaced by either e-mailing the document in PDF or sending the document by mail. A requirement to obtain express mail certification of the mailing of support documentation is added for those that intend to rely on the 30 day registration provisions of the EAR.

Paragraph (a) is divided into 5 subparagraphs that clarify existing review requirements and procedures. Former paragraph (a) is now new subparagraph (a)(1), and is revised to add a requirement to include a brief non-technical description of the type of product being submitted, *e.g.*, routers, disk drives, cell phones, chips, etc. Part of the introductory paragraph to Supp. No. 6 that addressed prior reviews is moved to a new subparagraph (a)(2), and is revised to add a requirement, for products with minor changes in encryption functionality, to include a cover sheet with complete reference to the previous review (CCATS#, Application Control Number (ACN), ECCN, authorization paragraph) along with a clear description of the changes. New subparagraph (a)(3) requires a description of how encryption is used in the product and the categories of encrypted data (*i.e.*, stored data, communications, management data, internal data, etc.). New subparagraph (a)(4) requires, for mass market reviews, a specific description of who will be receiving the product and how the product is being marketed, as well as how this method of marketing and other relevant information (*e.g.*, cost of product and volume of sales) is described by the Cryptography Note (Note 3 to Category 5, Part 2). New subparagraph (a)(5) clarifies information about any encryption source code being used.

Subparagraph (c)(1) is amended by adding the phrase ''including relevant parameters, inputs and settings'' to the end of the first sentence. Subparagraph (c)(6) is amended by adding more examples of communication and cryptographic functions, as well as replacing the term ''encryption protocols'' with a more accurate term ''cryptographic protocols and methods.'' An additional requirement is added to (c)(6) to describe how the protocols that are supported are used. The text of (c)(11) is revised to more clearly describe the information that would assist BIS.

The introductory text for paragraphs (d) and (e) is clarified.

Section 744.9 ''Restrictions on Technical Assistance by U.S. Persons With Respect to Encryption Items''

This rule removes § 744.9 of the EAR that required authorization from BIS for U.S. persons to provide technical assistance (including training) to foreign persons with the intent to aid a foreign person in the development or manufacture outside the United States of encryption commodities or software that, if of U.S.-origin, would be ''EI'' controlled under ECCNs 5A002 or 5D002. Section 744.9 was added to the EAR in 1996 when jurisdiction over dual-use encryption items was transferred from the Department of State to the Department of Commerce. Technical assistance is treated differently under the International Trade in Arms Regulations (ITAR) than it is in EAR. Technical assistance is considered a form of ''technology'' under the definition of ''technology'' in section 772.1 of the EAR. The EAR states that technical assistance ''may take forms such as instruction, skills training, working knowledge, consulting services'' and that it ''may involve transfer of 'technical data.' '' When a person performs technical assistance, which draws upon ''development,'' ''production,'' or ''use'' ''technology'' obtained in the United States or that is of U.S.-origin, then a release of ''technology'' takes place, which is considered an export or reexport and may require authorization under the EAR. BIS has observed that there is rarely an application for a license submitted under the requirements of section 744.9; however, requests for authorization under section 744.9 are often included in license applications for export of ECCN 5E002 Technology. This has led BIS to conclude that people are submitting license applications for technology exports and reexports when involved in technical assistance. Therefore, to harmonize the understanding of technical assistance as it is understood in the EAR with the practical application of it by the public, BIS is removing section 744.9. This removal does not remove any license requirements for controlled encryption technology released while performing technical assistance. This amendment does not affect the scope of the note in former 744.9 in that the mere teaching or discussion of information about cryptography, including, for example, in an academic setting or in the work of groups or bodies engaged in standards

development, by itself would not establish a license requirement under ECCN 5E002, even where foreign persons are present. Section 744.9 is replaced by a ''license requirement'' note in ECCN 5E002 on the Commerce Control List.

Supplement No. 2 to Part 748 ''Unique Application and Submission Requirements''

This rule adds a sentence instructing applicants to place an ''X'' in the box marked ''classification request'' in Block 5 (Type of Application) of Form BIS–748P or select ''Commodity Classification'' if filing electronically, because neither the electronic nor paper forms provide a separate Block to check for submission of encryption review requests.

Section 750.3 Review of License Application by BIS and Other Government Agencies and Departments

This rule makes an editorial correction by removing paragraph (b)(2)(iv) and redesignating (b)(2)(v) as (b)(2)(iv). This paragraph referred to the Arms Control and Disarmament Agency (ACDA), which no longer exists. However, ACDA's personnel and functions were absorbed by the Department of State in 1999. Therefore, this rule revises paragraph (b)(2)(iii) by adding national security and nuclear nonproliferation to the description of State Department's concerns. Missile technology is also added as a State Department concern because the State Department chairs the Missile Technology Export control interagency working group.

Section 750.7 Issuance of Licenses

This rule removes paragraph (c)(2), which explained how to amend your Encryption License Agreement (ELA) by letter. BIS has observed a trend that industry has been submitting license applications for replacement or new ELAs when they want a change. In addition, it is more efficient for applicants to apply and track applications than letters, because of BIS' electronic application system. It is also easier for BIS to process and track submissions of applications than letters for the same reason. Therefore, this provision is removed.

This rule removes the third and fourth sentences in the introductory text of paragraph (d) that pertain to the responsibilities of a licensee with regard to ELAs. These sentences are removed, because a licensee may not transfer its license responsibilities.

Section 762.2 Records To Be Retained

This rule removes paragraph (b)(8), which referred to records related to key escrow encryption items under License Exception KMI. This rule removes License Exception KMI and Supplement No. 4 to part 742 ''Key Escrow or Key Recovery Products Criteria,'' therefore this recordkeeping requirement no longer exists.

Section 770.2 Item Interpretations

This rule moves paragraph (n) ''Interpretation 14: Encryption commodity and software reviews,'' to a new note under paragraphs 740.17(b) and 742.15(b), so that exporters do not miss this important information about when to submit a new product review when a change has occurred in the encryption product. The text of this paragraph is also revised for clarity. The note explains that a new product review is not required when a change involves: the subsequent bundling, patches, upgrades or releases of a product; name changes; or changes to a previously reviewed encryption product limited to updates in an encryption software component (e.g., version updates of an encryption library that is called by a product to provide encryption functionality where the encryption library has either already been reviewed or did not require prior review.)

Section 772.1 Definition of terms as used in the Export Administration Regulations (EAR)

This rule removes the definition of ''strategic partner'' as this term is not used in the control or licensing of encryption items. This rule also adds definitions for two new terms ''ancillary cryptography'' and ''personal area network,'' which are associated with new review and reporting exclusions in License Exception ENC.

Commerce Control List—Supplement No. 1 to Part 774

This rule revises the Nota Bene to the Cryptography Note at the beginning of Category 5 Part 2 in order to harmonize it with the revisions in this rule.

This rule clarifies what is controlled for ''EI'' reasons in ECCNs 5A002, 5D002, and 5E002 by replacing the text ''EI applies to encryption items transferred from the U.S. Munitions List to the Commerce Control List consistent with E.O.13026 of November 15, 1996 (61 FR 58767) and pursuant to the Presidential Memorandum of that date. Refer to § 742.15 of this subchapter.'' with appropriate text that refers to specific paragraphs within those ECCNs for which EI applies. For ECCN 5A002, the new EI control reads ''EI applies to 5A002.a.1, a.2, a.5, a.6 and a.9. Refer to § 742.15 of the EAR.'' For ECCN 5D002, the new EI control reads, ''EI applies to ''software'' in 5D002.a or c.1 for equipment controlled for EI reasons in ECCN 5A002. Refer to § 742.15 of the EAR.'' For ECCN 5E002, the new EI control reads, ''EI applies to ''technology'' for the ''development,'' ''production,'' or ''use'' of commodities or ''software'' controlled for EI reasons in ECCNs 5A002 or 5D002. Refer to § 742.15 of the EAR.'' In addition, License Exception ENC is added to the License Exception section of each of these ECCNs, because it is the principal license exception for EI controlled items.

ECCN 5A002

This rule removes the license requirement notes section from ECCN 5A002, because there is no Wassenaar reporting requirement for this ECCN. In addition, this rule makes editorial corrections to the Related Controls paragraph by replacing the use of the term ''items'' with commodities when referring to ECCN 5A002 and 5A992. Moreover, this rule clarifies that if commodities are listed in paragraphs (a) through (f) in the Note to 5A002, and therefore the commodities are classified under ECCN 5A992, then the related software and technology are classified under ECCNs 5D992 and 5E992, respectively. This rule also revises Related Controls note 2 to be consistent with the mass market review procedures of § 742.15 of the EAR. This note now reads ''2) After a review and classification by BIS, mass market encryption commodities that meet eligibility requirements are released from ''EI'' and ''NS'' controls. These commodities are classified under ECCN 5A992.c. See § 742.15(b) of the EAR.''

ECCN 5A992

This rule revises the anti-terrorism (AT) controls for ECCN 5A992, by placing the entire entry under AT Column 1 controls, for ease of understanding and compliance. This rule adds a new paragraph 5A992.c. This new paragraph clarifies that a mass market commodity is classified under ECCN 5A992 upon completion of Government review of a commodity in accordance with paragraph 742.15(b) of the EAR, when that review determines that the commodity meets the requirements for mass market treatment. Encryption items are no longer presumed eligible for mass market treatment while pending Government review.

ECCN 5D002

This rule removes the third note in the License Requirement section, because the information in it does not harmonize with the revision made in this rule. In addition, this rule adds another note to the Related Controls paragraph to inform the public about the review and classification of mass market software.

ECCN 5D992

This rule revises the anti-terrorism (AT) controls for ECCN 5D992, by placing the entire entry under AT Column 1 controls, for ease of understanding and compliance. Paragraphs 5D992.a.1 and a.2, and 5D992.b.1 and b.2, are combined as 5D992.a and 5D992.b, respectively, in order to simplify the entry. This rule also removes paragraph 5D992.c (''software'' designed or modified to protect against malicious computer damage, *e.g.*, viruses) from ECCN 5D992, while adding a note in the Related Control stating, ''This entry does not control ''software'' designed or modified to protect against malicious computer damage, *e.g.*, viruses, where the use of ''cryptography'' is limited to authentication, digital signature and/or the decryption of data or files.'' Certain software for protection against malicious damage that meet the criteria of the Related Control note are thus now decontrolled and classified as EAR99, unless the software performs functions that are controlled under other ECCNs (whether under Category 5, part 2 or elsewhere in the Commerce Control List). Such software remains subject to the EAR and may be classified under ECCN 5D002 or 5D992 if it performs cryptographic functionality controlled by these Category 5, part 2 ECCNs (*e.g.*, data or file encryption, including of user or system data under Secure Socket Layer (SSL) encryption, even if the cryptographic functionality is not directly user accessible.) Examples of software decontrolled by this change include certain firewall and other software for the screening of digital content and the detection and removal of viruses, spyware and unsolicited commercial e-mail.

This rule also adds a new paragraph 5D992.c. This paragraph clarifies that mass market software is classified under ECCN 5D992.c upon completion of Government review of the software in accord with § 742.15 of the EAR when that review determines that the software meets the requirements for mass market treatment. Encryption software is no longer presumed eligible for mass market treatment.

ECCN 5E002

This rule adds a License Requirement Note to remind people to consider the possibility of the release of technology when performing technical assistance; the note reads, ''When a person performs or provides technical assistance that incorporates, or otherwise draws upon, ''technology'' that was either obtained in the United States or is of U.S.-origin, then a release of the ''technology'' takes place. Such technical assistance, when rendered with the intent to aid in the ''development'' or ''production'' of encryption commodities or software that would be controlled for ''EI'' reasons under ECCN 5A002 or 5D002, may require authorization under the EAR even if the underlying encryption algorithm to be implemented is from the public domain or is not of U.S. origin.'' In addition, in order to harmonize with the revisions in this rule and for consistency, this rule adds text to the Related Controls paragraph of the List of Items Controlled section to read ''This entry does not control ''technology'' ''required'' for the ''use'' of equipment excluded from control under the Related Controls paragraph or the Technical Notes in ECCN 5A002 or ''technology'' related to equipment excluded from control under ECCN 5A002. This ''technology'' is classified as ECCN 5E992.''

ECCN 5E992

This rule revises the anti-terrorism (AT) controls for ECCN 5E992, by placing the entire entry under AT Column 1 controls, for ease of understanding and compliance. This rule revises the references in 5E992.a and .b to conform to revisions included in this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of July 23, 2008, 73 FR 43603 (July 25, 2008), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves two collections of information subject to the PRA. One of the collections has been approved by OMB under control number 0694–0088, ''Multi Purpose Application,'' and carries a burden hour estimate of 58 minutes for a manual or electronic submission. The other collection has been approved by OMB under control number 0694–0104, ''Commercial Encryption Items Under the Jurisdiction of the Department of Commerce,'' and carries a burden hour estimate of 7 hours for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to Jasmeet Seehra, OMB Desk Officer, by e-mail at *jseehra@omb.eop.gov* or by fax to (202) 395–7285; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6622, Washington, DC 20230.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) are not applicable. Therefore, this regulation is issued in interim final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230.

List of Subjects

15 CFR Parts 732, 740, 748 and 750

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

15 CFR Parts 738, 770 and 772

Exports.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 732, 734, 738, 740, 742, 744, 746, 748, 750, 762, 770, 772 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 732—[AMENDED]

■ 1. The authority citation for part 732 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et. seq.*; 50 U.S.C. 1701 *et. seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 2. Section 732.2 is amended by revising paragraph (b) to read as follows:

§ 732.2 Steps Regarding Scope of the EAR

* * * * *

(b) *Step 2: Publicly available technology and software.* This step is relevant for both exports and reexports. Determine if your technology or software is publicly available as defined and explained at part 734 of the EAR. Supplement No. 1 to part 734 of the EAR contains several practical examples describing publicly available technology and software that are outside the scope of the EAR. The examples are illustrative, not comprehensive. Note that encryption software controlled for EI reasons under ECCN 5D002 on the Commerce Control List (refer to Supplement No.1 to Part 774 of the EAR) and mass market encryption software with symmetric key length exceeding 64-bits classified under ECCN 5D992 shall be subject to the EAR even if publicly available. Accordingly, the provisions of the EAR concerning the public availability of items are not applicable to encryption items controlled for ''EI'' reasons under ECCN 5D002 and mass market encryption software with symmetric key length exceeding 64-bits classified under ECCN 5D992.

* * * * *

PART 734—[AMENDED]

■ 3. The authority citation for part 734 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et. seq.*; 50 U.S.C. 1701 *et. seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

■ 4. Section 734.3 is amended by adding a note to paragraph (a)(4) to read as follows:

§ 734.3 Items Subject to the EAR

(a) * * *

(4) * * *

Note to paragraph (a)(4): Certain foreign-manufactured items developed or produced from U.S.-origin encryption items exported pursuant to License Exception ENC are subject to the EAR. See sections 740.17(a) and 740.17(b)(4)(ii) of the EAR.

■ 5. Supplement No. 1 to part 734 is amended by revising the introductory paragraph to read as follows:

Supplement No. 1 to Part 734—Questions and Answers—Technology and Software Subject to the EAR

This Supplement No. 1 contains explanatory questions and answers relating to technology and software that is subject to the EAR. It is intended to give the public guidance in understanding how BIS interprets this part, but is only illustrative, not comprehensive. In addition, facts or circumstances that differ in any material way from those set forth in the questions or answers will be considered under the applicable provisions of the EAR. Exporters should note that the provisions of this supplement do not apply to encryption software classified under ECCN 5D002 for ''EI'' reasons on the Commerce Control List or to mass market encryption software with symmetric key length exceeding 64-bits classified under ECCN 5D992. This Supplement is divided into nine sections according to topic as follows:

* * * * *

PART 738—[AMENDED]

■ 6. The authority citation for part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et. seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 7. Section 738.4 is amended by revising paragraphs (a)(1) and (a)(2)(ii)(B) to read as follows:

§ 738.4 Determining Whether a License Is Required

(a) * * *

(1) *Overview.* Once you have determined that your item is classified under a specific ECCN, you must use information contained in the ''License Requirements'' section of that ECCN in combination with the Country Chart to decide whether a license is required. Note that not all license requirements set forth under the ''License Requirements'' section of an ECCN refer you to the Commerce Country Chart, but in some cases this section will contain references to a specific section in the EAR for license requirements. In such cases, this section would not apply.

(2) * * *

(ii) * * *

(B) If *no*, a license is not required based on the particular Reason for Control and destination. Provided that General Prohibitions Four through Ten do not apply to your proposed transaction and that any applicable review requirements described in § 742.15(b) of the EAR have been met for certain mass market encryption items controlled under ECCNs 5A992 or 5D992, you may effect your shipment using the symbol ''NLR.'' Proceed to parts 758 and 762 of the EAR for information on export clearance procedures and recordkeeping requirements. Note that although you may stop after determining a license is required based on the first Reason for Control, it is best to work through each applicable Reason for Control. A full analysis of every possible licensing requirement based on each applicable Reason for Control *is required* to determine the most advantageous License Exception available for your particular transaction and, if a license is

required, ascertain the scope of review conducted by BIS on your license application.

* * * * *

PART 740—[AMENDED]

■ 8. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 9. Section 740.3 is amended by revising paragraph (d)(5) to read as follows:

§ 740.3 Shipments of Limited Value (LVS)

* * * * *

(d) * * *

(5) *Exports and reexports of encryption components or spare parts.* For components or spare parts controlled for ''EI'' reasons under ECCN 5A002, exports and reexports under this License Exception must be destined to support a commodity previously authorized for export or reexport.

* * * * *

§ 740.8 [Removed]

■ 10. Remove and reserve § 740.8.

§ 740.13 [Amended]

■ 11. Section 740.13 is amended by removing the quotation marks around the term ''mass market'' in paragraph (d) heading, paragraph (d)(1), footnote 1, paragraph (d)(3)(i) and paragraph (d)(3)(ii).

■ 12. Section 740.17 is revised to read as follows:

§ 740.17 Encryption Commodities, Software and Technology (ENC).

License Exception ENC authorizes export and reexport of software and commodities and components therefor that are classified under ECCNs 5A002.a.1, a.2, a.5, a.6 or a.9, 5B002, 5D002, and technology that is classified under ECCN 5E002. This License Exception ENC does not authorize export or reexport to, or provision of any service in any country listed in Country Group E:1 in Supplement No. 1 to part 740 of the EAR, or release of source code or technology to any national of a country listed in Country Group E:1. Reexports and transfers under License Exception ENC are subject to the criteria set forth in paragraph (c) of this section. Paragraph (d) of this section sets forth information about review requests required by this section. Paragraph (e) sets forth reporting required by this section.

(a) *No prior review or post export reporting required—(1) Internal ''development'' or ''production'' of new products.* License Exception ENC authorizes exports and reexports of items described in paragraph (a)(1)(i) of this section, to end-users described in paragraph (a)(1)(ii) of this section, for the intended end-use described in paragraph (a)(1)(iii) of this section without prior review by the U.S. Government.

(i) *Eligible items.* Eligible items are those classified under ECCNs 5A002.a.1, .a.2, .a.5, .a.6, or .a.9, 5B002, 5D002, or 5E002.

(ii) *Eligible end-users.* Eligible end-users are ''private sector end-users'' wherever located, except to countries listed in Country Group E:1 (see Supplement No. 1 to part 740 of the EAR) that are headquartered in a country listed in Supplement No. 3 of this part.

Note to paragraph (a)(1)(ii): A ''private sector end-user'' is:

(1) An individual who is not acting on behalf of any foreign government; or

(2) A commercial firm (including its subsidiary and parent firms, and other subsidiaries of the same parent) that is not wholly owned by, or otherwise controlled by or acting on behalf of, any foreign government.

(iii) *Eligible end-use.* The eligible end-use is internal ''development'' or ''production'' of new products by those end-users.

Note to paragraph (a)(1)(iii): All items produced or developed with items exported or reexported under this paragraph (a)(1) are subject to the EAR. These items may require review and authorization before sale, reexport or transfer, unless otherwise authorized by license or license exception.

(2) *Exports and reexports to ''U.S. Subsidiaries.''* License Exception ENC authorizes export and reexport of items classified under ECCNs 5A002.a.1, .a.2, .a.5, .a.6, or .a.9, 5B002, 5D002, or 5E002 to any ''U.S. subsidiary,'' wherever located, except to countries listed in Country Group E:1 (see Supplement No. 1 to part 740 of the EAR), without prior review by the U.S. Government. License Exception ENC also authorizes export or reexport of such items by a U.S. company and its subsidiaries to foreign nationals who are employees, contractors or interns of a U.S. company or its subsidiaries if the items are for internal company use, including the ''development'' or ''production'' of new products, without prior review by the U.S. Government.

Note to paragraph (a)(2): All items produced or developed with items exported or reexported under this paragraph (a)(2) are subject to the EAR. These items may require review and authorization before sale, reexport or transfer, unless otherwise authorized by license or license exception.

(b) *Prior review required.* License Exception ENC authorizes the export and reexport of commodities and software that require a license under ECCNs 5A002.a.1, a.2, a.5, a.6, or a.9, 5B002, or 5D002. Paragraph (b)(1)(i) of this section also authorizes the export and reexport of ''technology'' controlled for EI reasons under ECCN 5E002 to the end-users indicated in paragraph (b)(1)(i). Exports and reexports authorized under this paragraph (b) of License Exception ENC require submission of a review request in accordance with paragraph (d) of this section. License Exception ENC does not authorize the export or reexport of cryptanalytic items to any ''government end-user''. Export or reexport of items that provide an ''open cryptographic interface'' is only authorized under paragraph (b)(1)(i) of this section. Exports and reexports authorized under paragraph (b) of this section are subject to reporting requirements in accordance with paragraph (e) of this section.

(1) *Review required without waiting period.* Once your review request is registered with BIS in accordance with paragraph (d) of this section, License Exception ENC authorizes the exports or reexports (except to countries listed in Country Group E:1 of Supplement No. 1 to part 740 of the EAR) to the following destinations:

(i) *Export and reexport to countries listed in Supplement No. 3 of this part.* License Exception ENC authorizes the export and reexport of encryption items, including EI controlled commodities or software (excluding source code) that are pending review for mass market treatment (under § 742.15(b) of the EAR), to ''government end-users'' and non-''government end-users'' located in countries listed in Supplement 3 of this part, as well as to foreign subsidiaries or offices of firms, organizations and governments headquartered in countries listed in Supplement 3 of this part.

(ii) *Export and reexport to countries not listed in Supplement No. 3 of this part.* License Exception ENC authorizes the export and reexport of the following commodities and software:

(A) Encryption commodities and software (including key management products), as follows: for symmetric algorithms with key lengths not exceeding 80 bits; for asymmetric algorithms with key lengths not exceeding 1,024 bits; and for elliptic curve algorithms with key lengths not exceeding 160 bits. (After review has been completed, the issued Commodity Classification Automated Tracking

System (CCATS) document will indicate authorization is under paragraph (b)(2) or (b)(3) of this section, whichever paragraph is appropriate.)

(B) Encryption source code that would not be eligible for export or reexport under License Exception TSU, provided that a copy of the source code is included in the review request, to non-''government end-users'' located in any country except a country listed in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. (After the review has been completed, the issued Commodity Classification Automated Tracking System (CCATS) document will indicate authorization is under paragraph (b)(2) of this section.)

(2) *Review required with 30 day wait (non-''government end-users'' only).* Thirty days after your review request is registered with BIS in accordance with paragraph (d) of this section and subject to the reporting requirements in paragraph (e) of this section, License Exception ENC authorizes the export or reexport of the following commodities and software to non-''government end-users'' located in a country not listed in Supplement No. 3 to this part or Country Group E:1 of Supplement No. 1 to part 740 of the EAR:

(i) Network infrastructure software and commodities and components thereof (including commodities and software necessary to activate or enable cryptographic functionality in network infrastructure products) providing secure Wide Area Network (WAN), Metropolitan Area Network (MAN), Virtual Private Network (VPN), satellite, digital packet telephony/media (voice, video, data) over internet protocol, cellular or trunked communications meeting any of the following with key lengths exceeding 80-bits for symmetric algorithms:

(A) Aggregate encrypted WAN, MAN, VPN or backhaul throughput (includes communications through wireless network elements such as gateways, mobile switches, controllers, etc) greater than 90 Mbps;

(B) Wire (line), cable or fiber-optic WAN, MAN or VPN single-channel input data rate exceeding 154 Mbps;

(C) Media (voice/video/data) encryption or centralized key management supporting more than 250 concurrent encrypted data channels, or encrypted signaling to more than 1,000 endpoints, for digital packet telephony/media (voice/video/data) over internet protocol communications; or

(D) Air-interface coverage (e.g., through base stations, access points to mesh networks, bridges, etc.) exceeding 1,000 meters, where any of the following applies:

(*1*) Maximum transmission data rates exceeding 10 Mbps (at operating ranges beyond 1,000 meters);

(*2*) Maximum number of concurrent full-duplex voice channels exceeding 30; or

(*3*) Substantial support is required for installation or use;

(ii) Encryption source code that would not be eligible for export or reexport under License Exception TSU because it is not publicly available as that term is used in § 740.13(e)(1) of the EAR, and the export or reexport of the encryption source code that is not otherwise eligible for License Exception ENC under paragraph (b)(1)(ii)(B) of this section;

(iii) Encryption software, commodities or components therefor, that have any of the following:

(A) Been designed, modified, adapted or customized for ''government end-user(s)'' or government end-use (e.g., to secure police, state security, or emergency response communications), including encryption commodities and software for external security operations center (SOC)/network operations center (NOC) command and infrastructure, public safety radio, and digital forensics/computer forensics;

(B) Cryptographic functionality that has been modified or customized to customer specification; or

(C) Cryptographic functionality or ''encryption component'' (except encryption software that would be considered publicly available, as that term is used in § 740.13(e)(1) of the EAR) that is user-accessible and can be easily changed by the user;

(iv) ''Cryptanalytic items'';

(v) Encryption commodities and software that provide functions necessary for quantum cryptography, as defined in ECCN 5A002 of the Commerce Control List;

(vi) Encryption commodities and software that have been modified or customized for computers classified under ECCN 4A003.

(3) *Review required with 30 day waiting period (''government end-users'' or non-''government end-users'').* Thirty days after your review request is registered with BIS in accordance with paragraph (d) of this section, License Exception ENC authorizes the export and reexport of software and commodities and components not listed in paragraph (b)(2) of this section to either ''government end-users'' or non-''government end-users'' located in a country not listed in Supplement No. 3 to this part or Country Group E:1 of Supplement No. 1 to part 740 of the EAR.

(4) *Items excluded from review requirements—(i) Short-range wireless encryption functions.* Commodities and software not otherwise controlled in Category 5, but that are classified under ECCN 5A002, 5B002 or 5D002 only because they incorporate components or software that provide short-range wireless encryption functions (*e.g.*, with a nominal operating range not exceeding 100 meters according to the manufacturer's specifications). Commodities and software included in this description include those designed to comply with the Institute of Electrical and Electronic Engineers (IEEE) 802.11 wireless LAN standard (35 meters) for short-range use and those designed to comply with the IEEE 802.15.1 standard that provide only the short-range wireless encryption functionality, and would not be classified under Category 5, part 1 of the CCL (telecommunications) absent this encryption functionality. Certain items excluded from review by this paragraph may also be excluded from review under paragraph (b)(4)(iii) of this section (personal area networks) or paragraph (b)(4)(iv) of this section (commodities and software that provide ''ancillary cryptography'').

(ii) *Foreign products developed with or incorporating U.S.-origin encryption source code, components, or toolkits.* Foreign products developed with or incorporating U.S.-origin encryption source code, components or toolkits that are subject to the EAR, provided that the U.S.-origin encryption items have previously been reviewed and authorized by BIS and the cryptographic functionality has not been changed. Such products include foreign-developed products that are designed to operate with U.S. products through a cryptographic interface.

(iii) *Wireless ''personal area network'' items.* Wireless ''personal area network'' items that implement only published or commercial cryptographic standards and where the cryptographic capability is limited to a nominal operating range not exceeding 30 meters according to the manufacturer's specifications. See Nota Bene of the definition for ''personal area network'' in § 772.1 of the EAR.

(iv) *''Ancillary cryptography.''* Commodities and software that perform ''ancillary cryptography.'' See Nota Bene of definition of ''ancillary cryptography'' in § 772.1 of the EAR.

Note to paragraph (b): A new product review is required if a change is made to the cryptographic functionality (*e.g.*, algorithms) or other technical characteristics affecting License Exception ENC eligibility (*e.g.*, encrypted throughput) of the originally

reviewed product. However, a new product review is not required when a change involves: The subsequent bundling, patches, upgrades or releases of a product; name changes; or changes to a previously reviewed encryption product where the change is limited to updates of encryption software components where the product is otherwise unchanged.

(c) *Reexport and transfer.* U.S. or foreign distributors, resellers or other entities who are not original manufacturers of encryption commodities and software are permitted to use License Exception ENC only in instances where the export or reexport meets the applicable terms and conditions of this section. Transfers of encryption items listed in paragraph (b)(2) of this section to ''government end-users,'' or for government end-uses, within the same country are prohibited, unless otherwise authorized by license or license exception.

(d) *Review request procedures*—(1) *Submission.* To request review of your encryption items under License Exception ENC, you must submit to BIS and to the ENC Encryption Request Coordinator form BIS–748P (Multipurpose Application), or its electronic equivalent in accordance with the instructions in paragraph (r) of Supplement No. 2 to part 748 ''Unique Application and Submission Requirements'' and the applicable information described in paragraphs (a) through (e) of Supplement No. 6 to part 742 of the EAR (Guidelines for Submitting Review Requests for Encryption Items). Failure to properly complete these items may delay consideration of your review request.

(2) Action by BIS—(i) Notification. Upon completion of its review, BIS will send you written notice of the provisions of this section, if any, under which your items may be exported or reexported.

(ii) *After 30 days.* If BIS has not, within 30 days of registration of a complete review request from you, informed you that your item is not authorized for License Exception ENC, you may export or reexport under the applicable provisions of License Exception ENC.

(iii) *Hold Without Action (HWA).* BIS may hold your review request without action if necessary to obtain additional information or for any other reason necessary to ensure an accurate determination with respect to ENC eligibility. Time on such ''hold without action'' status shall not be counted towards fulfilling the 30 day waiting period specified in this paragraph and in paragraphs (b)(2) and (b)(3) of this section. BIS may require you to supply additional relevant technical information about your encryption item(s) or information that pertains to their eligibility for License Exception ENC at any time, before or after the expiration of the 30 day waiting period specified in this paragraph and in paragraphs (b)(2) and (b)(3) of this section. If you do not supply such information within 14 days after receiving a request for it from BIS, BIS may return your review request(s) without action or otherwise suspend or revoke your eligibility to use License Exception ENC for that item(s). At your request, BIS may grant you up to an additional 14 days to provide the requested information. Any request for such an additional number of days must be made prior to the date by which the information was otherwise due to be provided to BIS, and may be approved if BIS concludes that additional time is necessary.

(e) *Reporting requirements*—(1) *Semi-annual reporting requirement.* Semi-annual reporting is required for exports to all destinations other than Canada, and for reexports from Canada, under this license exception. Certain encryption items and transactions are excluded from this reporting requirement, see paragraph (e)(1)(iii) of this section. For information about what must be included in the report and submission requirements, see paragraphs (e)(1)(i) and (e)(1)(ii) of this section respectively.

(i) *Information required.* Exporters must include for each item, the Commodity Classification Automated Tracking System (CCATS) number and the name of the item(s) exported (or reexported from Canada), and the following information in their reports:

(A) *Distributors or resellers.* For items exported (or reexported from Canada) to a distributor or other reseller, including subsidiaries of U.S. firms, the name and address of the distributor or reseller, the item and the quantity exported or reexported and, if collected by the exporter as part of the distribution process, the end-user's name and address;

(B) *Individual consumers.* For items exported (or reexported from Canada) to individual consumers through direct sale, the name and address of the recipient, the item, and the quantity exported; or

(C) *Foreign manufacturers and products that use encryption items.* For exports (i.e., from the United States) or direct transfers (*e.g.* by a ''U.S. subsidiary'' located outside the United States) of encryption components, source code, general purpose toolkits, equipment controlled under ECCN 5B002, technology, or items that provide an ''open cryptographic interface'' exported to a foreign developer or manufacturer headquartered in a country not listed in Supplement No. 3 to this part when intended for use in foreign products developed for commercial sale, the names and addresses of the manufacturers using these encryption items and, if known, when the product is made available for commercial sale, a non-proprietary technical description of the foreign products for which these encryption items are being used (*e.g.,* brochures, other documentation, descriptions or other identifiers of the final foreign product; the algorithm and key lengths used; general programming interfaces to the product, if known; any standards or protocols that the foreign product adheres to; and source code, if available).

(ii) *Submission requirements.* For exports occurring between January 1 and June 30, a report is due no later than August 1 of that year. For exports occurring between July 1 and December 31, a report is due no later than February 1 the following year. These reports must be provided in electronic form. Recommended file formats for electronic submission include spreadsheets, tabular text or structured text. Exporters may request other reporting arrangements with BIS to better reflect their business models. Reports may be sent electronically to BIS at *crypt@bis.doc.gov* and to the ENC Encryption Request Coordinator at *enc@nsa.gov*, or disks and CDs containing the reports may be sent to the following addresses:

(A) Department of Commerce, Bureau of Industry and Security, Office of National Security and Technology Transfer Controls, 14th Street and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230, Attn: Encryption Reports, and

(B) Attn: ENC Encryption Request Coordinator, 9800 Savage Road, Suite 6940, Ft. Meade, MD 20755–6000.

(iii) *Exclusions from reporting requirement.* Reporting is not required for the following items and transactions:

(A) Any encryption item exported (or reexported from Canada) under paragraph (a) of this section;

(B) Encryption commodities or software with a symmetric key length not exceeding 64 bits;

(C) Encryption commodities or software authorized under paragraph (b)(3) of this section, exported (or reexported from Canada) to individual consumers;

(D) Encryption items exported (or reexported from Canada) via free and anonymous download;

(E) Encryption items from or to a U.S. bank, financial institution or its subsidiaries, affiliates, customers or contractors for banking or financial operations;

(F) Items listed in (b)(4) of this section, unless it is a foreign item described in (b)(4)(ii) that has entered the United States;

(G) Foreign products developed by bundling or compiling of source code;

(H) General purpose operating systems, or desktop applications (*e.g.*, e-mail, browsers, games, word processing, data base, financial applications or utilities) authorized under paragraph (b)(3) of this section;

(I) Client Internet appliance and client wireless LAN cards; or

(J) Other items as determined on a case-by-case basis.

(2) *Reporting key length increases.* Reporting is required for commodities and software that, after having been reviewed and authorized for License Exception ENC by BIS, are modified only to upgrade the key length used for confidentiality or key exchange algorithms. Such items may be exported or reexported under the previously authorized provision of License Exception ENC without further review.

(i) *Information required.* (A) A certification that no change to the encryption functionality has been made other than to upgrade the key length for confidentiality or key exchange algorithms.

(B) The original Commodity Classification Automated Tracking System (CCATS) authorization number issued by BIS and the date of issuance.

(C) The new key length.

(ii) *Submission requirements.* (A) The report must be received by BIS and the ENC Encryption Request Coordinator before the export or reexport of the upgraded product; and

(B) The report is e-mailed to *crypt@bis.doc.gov* and *enc@nsa.gov*.

Supplement No. 3 to Part 740 [Amended]

■ 13. Supplement No. 3 is amended by:

■ a. Revising the heading to read ''License Exception ENC Favorable Treatment Countries''; and

■ b. Adding Bulgaria, Canada, Iceland, Romania, and Turkey in alphabetic order.

PART 742—[AMENDED]

■ 14. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

■ 15. Section 742.15 is revised to read as follows:

§ 742.15 Encryption items.

Encryption items can be used to maintain the secrecy of information, and thereby may be used by persons abroad to harm U.S. national security, foreign policy and law enforcement interests. The United States has a critical interest in ensuring that important and sensitive information of the public and private sector is protected. Consistent with our international obligations as a member of the Wassenaar Arrangement, the United States has a responsibility to maintain control over the export and reexport of encryption items. As the President indicated in Executive Order 13026 and in his Memorandum of November 15, 1996, exports and reexports of encryption software, like exports and reexports of encryption hardware, are controlled because of this functional capacity to encrypt information, and not because of any informational or theoretical value that such software may reflect, contain, or represent, or that its export or reexport may convey to others abroad. For this reason, export controls on encryption software are distinguished from controls on other software regulated under the EAR.

(a) *Licensing requirements and policy—(1) Licensing requirements.* A license is required to export or reexport encryption items (''EI'') classified under ECCN 5A002.a.1, a.2, a.5, a.6 and a.9; 5D002.a or c.1 for equipment controlled for EI reasons in ECCN 5A002; or 5E002 for ''technology'' for the ''development,'' ''production,'' or ''use'' of commodities or ''software'' controlled for EI reasons in ECCNs 5A002 or 5D002 to all destinations, except Canada. Refer to part 740 of the EAR for license exceptions that apply to certain encryption items, and to § 772.1 of the EAR for definitions of encryption items and terms. Most encryption items may be exported under the provisions of License Exception ENC set forth in § 740.17 of the EAR. Before submitting a license application, please review License Exception ENC to determine whether this license exception is available for your item or transaction. For exports and reexports of encryption items that are not eligible for a license exception, exporters must submit an application to obtain authorization under a license or an Encryption Licensing Arrangement.

(2) *Licensing policy.* Applications will be reviewed on a case-by-case basis by BIS, in conjunction with other agencies, to determine whether the export or reexport is consistent with U.S. national security and foreign policy interests. Encryption Licensing Arrangements (ELAs) may be authorized for exports and reexports of unlimited quantities of encryption commodities and software to national or federal government bureaucratic agencies for civil use, and to state, provincial or local governments, in all destinations, except countries listed in Country Group E:1 of Supplement No. 1 to part 740. ELAs are valid for four years and may require post-export reporting or pre-shipment notification. Applicants seeking authorization for Encryption Licensing Arrangements must specify the sales territory and class of end-user on their license applications.

Note to paragraph (a): Pursuant to Note 3 to Category 5 Part 2 of the Commerce Control List in Supplement No. 1 to part 774, once mass market encryption commodities and software have been reviewed by BIS and the ENC Encryption Request Coordinator (Ft. Meade, MD) and released from ''EI'' and ''NS'' controls pursuant to § 742.15(b) of the EAR, they are classified under ECCN 5A992 and 5D992 respectively, and are thereafter outside the scope of this section.

(b) *Review requirement for mass market encryption commodities and software exceeding 64 bits:* Mass market encryption commodities and software employing a key length greater than 64 bits for the symmetric algorithm (including such products previously reviewed by BIS and exported under ECCN 5A002 or 5D002) are subject to the EAR and require review by BIS and the ENC Encryption Request Coordinator (Ft. Meade, MD), prior to export or reexport. Encryption commodities and software that are described in § 740.17(b)(2) of the EAR do not qualify for mass market treatment. A new product review is required if a change is made to the cryptographic functionality (*e.g.*, algorithms) or other technical characteristics affecting mass market eligibility (*e.g.*, performance enhancements to provide network infrastructure services, or customizations to end-user specifications) of the originally reviewed product. However, a new product review is not required when a change involves: The subsequent

bundling, patches, upgrades or releases of a product; name changes; or changes to a previously reviewed encryption product where the change is limited to updates of encryption software components where the product is otherwise unchanged.

(1) *Procedures for requesting review.* To request review of your mass market encryption products, you must submit to BIS and the ENC Encryption Request Coordinator the information described in paragraphs (a) through (e) of Supplement No. 6 to this part 742, and you must include specific information describing how your products qualify for mass market treatment under the criteria in the Cryptography Note (Note 3) of Category 5, Part 2 (''Information Security''), of the Commerce Control List (Supplement No. 1 to part 774 of the EAR). Review requests must be submitted on Form BIS–748P (Multipurpose Application), or its electronic equivalent, as described in § 748.3 of the EAR. See paragraph (r) of Supplement No. 2 to Part 748 of the EAR for special instructions about this submission. Review requests that are not submitted electronically to BIS should be mailed to the address indicated in § 748.2(c) of the EAR. Submissions to the ENC Encryption Request Coordinator should be directed to the mailing address indicated in § 740.17(e)(1)(ii) of the EAR. BIS will notify you if there are any questions concerning your request for review (*e.g.*, because of missing or incompatible support documentation).

(2) *Action by BIS.* Once BIS has completed its review, you will receive written confirmation concerning the eligibility of your items for export or reexport as mass market encryption commodities or software classified under ECCN 5A992 or 5D992. If, during the course of its review, BIS determines that your encryption items do not qualify for mass market treatment under the EAR, or are otherwise classified under ECCN 5A002, 5B002, 5D002 or 5E002, BIS will notify you and will review your commodities or software for eligibility under License Exception ENC (see § 740.17 of the EAR for review and reporting requirements for encryption items under License Exception ENC). BIS reserves the right to suspend your eligibility to export and reexport under the provisions of this paragraph (b) and to return review requests, without action, if the requirements for review have not been met. Thirty days after BIS registers your review request, you may export or reexport these mass market encryption products, without a license, to government and non-government end-users located in most destinations outside the countries listed in Supplement No. 3 to part 740 of the EAR (certain destinations and persons may require a license for anti-terrorism (AT) reasons or for reasons specified elsewhere in the EAR), unless otherwise notified by BIS (*e.g.*, because of missing or incomplete support documentation or conversion to License Exception ENC review.) The thirty days does not include any time that your review request is on hold without action.

(3) *Exclusions from review requirements.* The following commodities and software do not require review prior to export or reexport as mass market products.

(i) *Short-range wireless encryption functions.* Commodities and software not otherwise controlled in Category 5, but that are classified under ECCN 5A992 or 5D992 only because they incorporate components or software that provide short-range wireless encryption functions (*e.g.*, with a nominal operating range not exceeding 100 meters according to the manufacturer's specifications). Commodities and software included in this description include those designed to comply with the Institute of Electrical and Electronic Engineers (IEEE) 802.11 wireless LAN standard (35 meters) for short-range use and those designed to comply with the IEEE 802.15.1 standard that provide only the short-range wireless encryption functionality, and would not be classified under Category 5, part 1 of the CCL (telecommunications) absent this encryption functionality. Certain items excluded from review by this paragraph may also be excluded from review under paragraph (b)(3)(ii) of this section (personal area networks) or paragraph (b)(3)(iii) of this section (commodities and software that provide ''ancillary cryptography'').

(ii) *Wireless ''personal area network'' items.* Wireless ''personal area network'' items that implement only published or commercial cryptographic standards and where the cryptographic capability is limited to a nominal operating range not exceeding 30 meters according to the manufacturer's specifications. See Nota Bene of the definition for ''personal area network'' in § 772.1 of the EAR.

(iii) ''*Ancillary cryptography*''. Commodities and software that perform ''ancillary cryptography.'' See Nota Bene of definition of ''ancillary cryptography'' in § 772.1 of the EAR.

(4) *Commodities and software that activate or enable cryptographic functionality.* Commodities, software, and components that allow the end-user to activate or enable cryptographic functionality in encryption products which would otherwise remain disabled, are controlled according to the functionality of the activated encryption product.

(5) *Examples of mass market encryption products.* Subject to the requirements of the Cryptography Note (Note 3) in Category 5, Part 2, of the Commerce Control List, mass market encryption products include, but are not limited to, general purpose operating systems and desktop applications (*e.g.*, e-mail, browsers, games, word processing, database, financial applications or utilities) designed for use with computers classified as ECCN 4A994 or EAR99, laptops, or hand-held devices; commodities and software for client Internet appliances and client wireless LAN devices; home use networking commodities and software (*e.g.*, personal firewalls, cable modems for personal computers, and consumer set top boxes); and portable or mobile civil telecommunications commodities and software (*e.g.*, personal data assistants (PDAs), radios, or cellular products).

Supplement No. 4 to Part 742 [Removed]

■ 16. Supplement No. 4 to Part 742 is removed and reserved.

■ 17. Supplement No. 6 to Part 742 is amended by:

■ a. Revising the introductory paragraph;

■ b. Revising paragraph (a);

■ c. Revising paragraphs (c)(1), (c)(6), and (c)(11);

■ e. Revising the introductory paragraphs of (d) and (e), to read as follows:

Supplement No. 6 to Part 742—Guidelines for Submitting Review Requests for Encryption Items

Review requests for encryption items must be submitted on Form BIS–748P (Multipurpose Application), or its electronic equivalent, and supported by the documentation described in this Supplement, in accordance with the procedures described in § 748.3 of the EAR. To ensure that your review request is properly routed, insert the phrase ''Mass market encryption'' or ''License Exception ENC'' (whichever is applicable) in Block 9 (Special Purpose) of the application form and place an ''X'' in the box marked ''Classification Request'' in Block 5 (Type of Application)—Block 5 does not provide a separate item to check for the submission of encryption review requests. Failure to properly complete these items may delay consideration of your review request. BIS recommends that review requests be delivered via courier service or be sent to: Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Ave., NW., Room 2705, Washington, DC 20230.

For electronic submissions via SNAP–R, support documents not readily attached in PDF format must be sent to: Bureau of Industry and Security, Information Technology Controls Division, Room 2093, 14th Street and Pennsylvania Ave., NW., Washington, DC 20230.

In addition, you must send a copy of your review request and all support documents to: Attn: ENC Encryption Request Coordinator, 9800 Savage Road, Suite 6940, Fort Meade, MD 20755–6000.

If you intend to rely on the 30 day registration provisions of the regulations, express mail certification of these documents is needed.

(a)(1) State the name(s) of each product being submitted for review and provide a brief non-technical description of the type of product (*e.g.*, routers, disk drives, cell phones, chips, etc.) being submitted.

(2) Indicate whether there have been any prior reviews of the product(s), if such reviews are applicable to the current submission. For products with minor changes in encryption functionality, you must include a cover sheet with complete reference to the previous review (Commodity Classification Automated Tracking System (CCATS) number, Application Control Number (ACN), Export Control Classification Number (ECCN), authorization paragraph) along with a clear description of the changes.

(3) Describe how encryption is used in the product and the categories of encrypted data (*e.g.*, stored data, communications, management data, internal data, etc.).

(4) For mass market review requests, describe specifically to whom and how the product is being marketed and state how this method of marketing and other relevant information (*e.g.*, cost of product and volume of sales) are described by the Cryptography Note (Note 3 to Category 5, Part 2).

(5) Is any ''encryption source code'' being provided (shipped or bundled) as part of this offering? If yes, is this source code publicly available source code, unchanged from the code obtained from an open source web site, or is it proprietary ''encryption source code?''

* * * * *

(c) * * *

(1) Description of all the symmetric and asymmetric encryption algorithms and key lengths and how the algorithms are used, including relevant parameters, inputs and settings. Specify which encryption modes are supported (*e.g.*, cipher feedback mode or cipher block chaining mode).

* * * * *

(6) State all communication protocols (*e.g.*, X.25, Telnet, TCP, IEEE 802.11, IEEE 802.16, SIP * * *) and cryptographic protocols and methods (*e.g.*, SSL, TLS, SSH, IPSEC, IKE, SRTP, ECCN, MD5, SHA, X.509, PKCS standards * * *) that are supported and describe how they are used.

* * * * *

(11) License Exception ENC 'Restricted' commodities and software described by the criteria in § 740.17(b)(2) require licenses to certain ''government end-users.'' Describe whether the product(s) meet any of the § 740.17(b)(2) criteria. Provide specific data for each of the parameters listed, as applicable (*e.g.*, maximum aggregate encrypted user data throughput, maximum number of concurrent encrypted channels, and operating range for wireless products). If the § 740.17(b)(2) parameters are not applicable to the commodity or software, clearly explain why (*e.g.*, by providing specific data evaluated against the § 740.17(b)(2) thresholds.)

(d) For review requests for hardware or software ''encryption components'' other than source code (*i.e.*, chips, toolkits, executable or linkable modules intended for use in or production of another encryption item) provide the following additional information:

* * * * *

(e) For review requests for ''encryption source code'' provide the following information:

* * * * *

PART 744—[AMENDED]

■ 18. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

§ 744.9 [Removed]

■ 19. Remove and reserve § 744.9.

PART 746—[AMENDED]

■ 20. The authority citation for part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Presidential Determination 2007–7 of December 7, 2006, 72 FR 1899 (January 16, 2007); Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

§ 746.3 [Amended]

■ 21. Section 746.3 is amended in paragraph (c) by revising the phrase ''License Exceptions: CIV, APP, TMP, RPL, GOV, GFT, TSU, BAG, AVS, ENC or KMI.'' to read ''License Exceptions: CIV, APP, TMP, RPL, GOV, GFT, TSU, BAG, AVS, or ENC.''

PART 748—[AMENDED]

■ 22. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 23. Supplement No. 2 to part 748 is amended by revising paragraph (r) to read as follows:

Supplement No. 2 to Part 748—Unique Application and Submission Requirements

* * * * *

(r) *Encryption review requests.* Enter, in Block 9 (Special Purpose) of the BIS–748P, ''License Exception ENC'' if you are submitting an encryption review request for License Exception ENC (§ 740.17 of the EAR) or ''mass market encryption'' if you are submitting an encryption review request under the mass market encryption provisions (§ 742.15(b) of the EAR). If you seek an encryption review for another reason, enter ''encryption—other''. Neither the electronic nor paper forms provide a separate Block to check for the submission of encryption review requests, therefore you must also, place an ''X'' in the box marked ''Classification Request'' in Block 5 (Type of Application) of Form BIS–748P or select ''Commodity Classification'' if filing electronically. Failure to properly complete these items may delay consideration of your review request.

* * * * *

PART 750—[AMENDED]

■ 24. The authority citation for part 750 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 25. Section 750.3 is amended by:

■ a. Removing paragraph (b)(2)(iv) and redesignating paragraph (b)(2)(v) as (b)(2)(iv); and

■ b. Revising (b)(2)(iii) to read as follows:

§ 750.3 Review of License Applications by BIS and Other Government Agencies and Departments.

* * * * *

(b) * * *

(2) * * *

(iii) The Department of State is concerned primarily with items controlled for national security, nuclear nonproliferation, missile technology,

regional stability, anti-terrorism, crime control reasons, and sanctions; and
* * * * *

§ 750.7 [Amended]

■ 26. Section 750.7 is amended by:
■ a. Removing and reserving paragraph (c)(2); and
■ b. Removing the third and fourth sentences in the introductory text of paragraph (d).

PART 762—[AMENDED]

■ 27. The authority citation for part 762 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

§ 762.2 [Amended]

■ 28. Section 762.2 is amended by removing and reserving paragraph (b)(8).

PART 770—[AMENDED]

■ 29. The authority citation for part 770 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

§ 770.2 [Amended]

■ 30. Section 770.2 is amended by removing paragraph (n).

PART 772—[AMENDED]

■ 31. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

■ 32. Section 772.1 is amended by:
■ a. Removing the term and definition ''strategic partners (of a U.S. company)''; and
■ b. Adding the terms and definitions for ''ancillary cryptography'' and ''personal area network'' in alphabetic order, to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Ancillary cryptography. The incorporation or application of ''cryptography'' by items that are not primarily useful for computing (including the operation of ''digital computers''), communications, networking (includes operation, administration, management and provisioning) or ''information security''.

N.B. Commodities and software that perform ''ancillary cryptography'' (*e.g.*, are specially designed and limited to: piracy and theft prevention for software, music, etc.; games and gaming; household utilities and appliances; printing, reproduction, imaging and video recording or playback (but not videoconferencing); business process modeling and automation (*e.g.*, supply chain management, inventory, scheduling and delivery); industrial, manufacturing or mechanical systems (including robotics, other factory or heavy equipment, facilities systems controllers including fire alarms and HVAC); automotive, aviation and other transportation systems). Commodities and software included in this description are not limited to wireless communication and are not limited by range or key length.

* * * * *

Personal area network. A data communication system having all of the following characteristics:

(a) Allows an arbitrary number of independent or interconnected 'data devices'' to communicate directly with each other; and

(b) Is confined to the communication between devices within the immediate vicinity of an individual person or device controller (*e.g.*, single room, office, or automobile).

Technical Note: 'Data device' means equipment capable of transmitting or receiving sequences of digital information.

N.B. ''Personal area network'' items include but are not limited to items designed to comply with the Institute of Electrical and Electronic Engineers (IEEE) 802.15.1 standard, class 2 (10 meters) and class 3 (1 meter), but not class 1 (100 meters) items. This includes most home networking devices, but not long-range enterprise equipment or components that can be used in long-range equipment. IEEE 802.15.1 class 2 and class 3 devices include hands-free headsets, wireless networking between personal computers, wireless mice, keyboards and printers, Global Positioning Systems (GPS) receivers, bar code scanners and game console wireless controllers, as well as data-capable wireless telephones and devices or software for transfer of files between devices using Object Exchange (OBEX).

* * * * *

PART 774—[AMENDED]

■ 33. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

Supplement No. 1 to Part 774—[Amended]

■ 34. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5 Telecommunications and ''Information Security'', Part 2 Information Security is amended by revising the Nota Bene to Cryptography Note, to read as follows:

CATEGORY 5—TELECOMMUNICATIONS AND ''INFORMATION SECURITY''

* * * * *

II. ''Information Security''

* * * * *

N.B. to Cryptography Note: Mass market encryption commodities and software eligible for the Cryptography Note employing a key length greater than 64 bits for the symmetric algorithm must be reviewed in accordance with the requirements of § 742.15(b) of the EAR in order to be released from the ''EI'' and ''NS'' controls of ECCN 5A002 or 5D002.

■ 35. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5 Telecommunications and ''Information Security'', Part 2 Information Security, Export Control Classification Number (ECCN) 5A002 is amended by
■ a. Revising the EI paragraph of the License Requirements section;
■ b. Removing the License Requirements Notes from the License Requirements section;
■ c. Adding a license exception paragraph to the License Exception section; and
■ d. Revising the Related Controls paragraph of the List of Items Controlled section, to read as follows:

5A002 Systems, equipment, application specific ''electronic assemblies'', modules and integrated circuits for ''information security'', as follows (see List of Items Controlled), and other specially designed components therefor.

License Requirements

* * * * *

Control(s)	Country chart

* * * * *

EI applies to 5A002.a.1, a.2, a.5, a.6 and a.9. Refer to § 742.15 of the EAR.

License Exceptions

* * * * *

ENC: Yes for certain EI controlled commodities, see § 740.17 of the EAR for eligibility.

List of Items Controlled

Unit: * * *

Related Controls: (1) 5A002 does not control the commodities listed in paragraphs (a) through (f) in the Note in the items paragraph of this entry. These commodities are instead classified under ECCN 5A992, and related software and technology are classified under ECCNs 5D992 and 5E992 respectively. (2) After a review and classification by BIS, mass market encryption commodities that meet eligibility requirements are released from ''EI'' and ''NS'' controls. These commodities are classified under ECCN 5A992.c. See § 742.15(b) of the EAR.

Related Definitions: * * *

Items: * * *

■ 36. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5 Telecommunications and ''Information Security'', Part 2 Information Security, Export Control Classification Number (ECCN) 5A992 is amended by revising the License Requirements section and paragraph c in the items paragraph of the List of Items Controlled section, to read as follows:

5A992 Equipment not controlled by 5A002.

License Requirements

* * * * *

Control(s)	Country chart
AT applies to entire entry ..	AT Column 1.

* * * * *

List of Items Controlled

* * * * *

Items:

* * * * *

c. Commodities that have been reviewed and determined to be mass market encryption commodities in accordance with § 742.15(b) of the EAR.

■ 37. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5 Telecommunications and ''Information Security'', Part 2 ''Information Security'', Export Control Classification Number (ECCN) 5D002 is amended by:

■ a. Revising the EI paragraph of the License Requirements section;

■ b. Adding a new license exception to the License Exception section;

■ c. Removing the third Note in the License Requirements section; and

■ d. Revising the Related Controls paragraph in the List of Items Controlled section, to read as follows:

5D002 Information Security—''Software''.

License Requirements

* * * * *

Control(s)	Country chart

* * * * *

EI applies to ''software'' in 5D002.a or c.1 for equipment controlled for EI reasons in ECCN 5A002. Refer to § 742.15 of the EAR.

* * * * *

License Exceptions

* * * * *

ENC: Yes for certain EI controlled software, see § 740.17 of the EAR for eligibility.

List of Items Controlled

Unit: $ value

Related Controls: (1) This entry does not control ''software'' ''required'' for the ''use'' of equipment excluded from control under the Related Controls paragraph or the Technical Notes in ECCN 5A002 or ''software'' providing any of the functions of equipment excluded from control under ECCN 5A002. This software is classified as ECCN 5D992. (2) After a review and classification by BIS, mass market encryption software that meet eligibility requirements are released from ''EI'' and ''NS'' controls. This software is classified under ECCN 5D992.c. See § 742.15(b) of the EAR.

Related Definitions: * * *

Items: * * *

■ 38. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5 Telecommunications and ''Information Security'', Part 2 Information Security, Export Control Classification Number (ECCN) 5D992 is amended by:

■ a. Revising the License Requirements section;

■ b. Revising the Related Controls paragraph of the List of Items Controlled section; and

■ c. Revising the Items paragraph of the List of Items Controlled section, to read as follows:

5D992 ''Information Security'' ''software'' not controlled by 5D002.

License Requirements.

* * * * *

Control(s)	Country chart
AT applies to entire entry ..	AT Column 1.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: This entry does not control ''software'' designed or modified to protect against malicious computer damage, *e.g.*, viruses, where the use of ''cryptography'' is limited to authentication, digital signature and/or the decryption of data or files.

Related Definitions: * * *

Items:

a. ''Software'' specially designed or modified for the ''development,'' ''production,'' or ''use'' of equipment controlled by ECCN 5A992.a or 5A992.b.

b. ''Software'' having the characteristics, or performing or simulating the functions of the equipment controlled by ECCN 5A992.a or 5A992.b.

c. ''Software'' that has been reviewed and determined to be mass market encryption software in accordance with § 742.15(b) of the EAR.

■ 39. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5 Telecommunications and ''Information Security'', Part 2 Information Security, Export Control Classification Number (ECCN) 5E002 is amended by:

■ a. Revising the EI paragraph and adding a License Requirement Note in the License Requirements section; and

■ b. Revising the Related Control paragraph of the List of Items Controlled section, to read as follows:

5E002 ''Technology'' according to the General Technology Note for the ''development'', ''production'' or ''use'' of equipment controlled by 5A002 or 5B002 or ''software'' controlled by 5D002.

License Requirements

* * * * *

Control(s)	Country chart

* * * * *

EI applies to ''technology'' for the ''development,'' ''production,'' or ''use'' of commodities or ''software'' controlled for EI reasons in ECCNs 5A002 or 5D002. Refer to § 742.15 of the EAR.

License Requirement Note: When a person performs or provides technical assistance that incorporates, or otherwise draws upon, ''technology'' that was either obtained in the United States or is of US-origin, then a release of the ''technology'' takes place. Such technical assistance, when rendered with the intent to aid in the ''development'' or ''production'' of encryption commodities or software that would be controlled for ''EI'' reasons under ECCN 5A002 or 5D002, may require authorization under the EAR even if the underlying encryption algorithm to be implemented is from the public domain or is not of U.S. origin.

* * * * *

List of Items Controlled

* * * * *

Related Controls: See also 5E992. This entry does not control ''technology'' ''required'' for the ''use'' of equipment excluded from control under the Related Controls paragraph or the Technical Notes in ECCN 5A002 or ''technology'' related to equipment excluded from control under ECCN 5A002. This ''technology'' is classified as ECCN 5E992.

* * * * *

■ 40. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 5

Telecommunications and ''Information Security'', Part 2 Information Security, Export Control Classification Number (ECCN) 5E992 is amended by revising the License Requirements section and the List of Items Controlled section, to read as follows:

5E992 ''Information Security'' ''technology'', not controlled by 5E002.

License Requirements

* * * * *

Control(s)	Country chart
AT applies to entire entry ..	AT Column 1.

* * * * *

List of Items Controlled

* * * * *

Items:

a. ''Technology'' n.e.s., for the ''development'', ''production'' or ''use'' of equipment controlled by 5A992.a, ''information security''or cryptologic equipment controlled by 5A992.b or ''software'' controlled by 5D992.a or b.

b. ''Technology'', n.e.s., for the ''use'' of mass market commodities controlled by 5A992.c or mass market ''software'' controlled by 5D992.c.

Dated: September 26, 2008.

Christopher R. Wall,

Assistant Secretary for Export Administration.

[FR Doc. E8–23201 Filed 10–2–08; 8:45 am]

BILLING CODE 3510–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 143

RIN 3038–AC13

Adjustment of Civil Monetary Penalties for Inflation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission) is amending its rule which governs the maximum amount of civil monetary penalties, to adjust for inflation. This rule sets forth the maximum, inflation-adjusted dollar amount for civil monetary penalties (CMPs) assessable for violations of the Commodity Exchange Act (Act) and Commission rules and orders thereunder. The rule, as amended, implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The rules also reflect the higher penalties enacted this year by Congress for violations of the Act prohibiting manipulation and attempted manipulation.

DATES: *Effective Date:* October 23, 2008.

FOR FURTHER INFORMATION CONTACT: Thuy Dinh, Esq., Office of General Counsel, at (202) 418–5128 or *tdinh@cftc.gov*; or Richard Foelber, Esq., Division of Enforcement, at (202) 418–5347 or *rfoelber@cftc.gov*, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. This document also is available at *http://www.regulations.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Debt Collection Improvement Act of 1996 (DCIA),[1] requires the head of each Federal agency to adjust by regulation, at least once every four years, the maximum amount of CMPs provided by law within the jurisdiction of that agency by the cost of living adjustment defined in the FCPIAA, as amended.[2] Because the purposes of the inflation adjustments include maintaining the deterrent effect of CMPs and promoting compliance with the law, the Commission monitors the impact of inflation on its CMP maximums and adjusts them as needed to implement the requirements and purposes of the FCPIAA.[3]

Congress this year enacted the CFTC Reauthorization Act of 2008 at Title XIII of the Food, Conservation, and Energy Act of 2008, P.L. 110–246, 122 Stat. 1651 (eff. May 22, 2008)(Farm Bill). Section 13103(a)–(c) amends sections 6(c), 6b and 6c of the Act, in each case increasing the maximum civil monetary penalty that may be imposed ''in any case of manipulation or attempted manipulation'' in violation of section 6(c), 6(d), or 9(a)(2) to ''the greater of $1,000,000 or triple the monetary gain'' to the violator.[4]

II. Relevant Commission CMPs

The inflation adjustment requirement applies to:

[A]ny penalty, fine or other sanction that—

(A) Is for a specific monetary amount as provided by Federal law; or

(ii) Has a maximum amount provided for by Federal law; and

(B) Is assessed or enforced by an agency pursuant to Federal law; and

(C) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts[.] 28 U.S.C. 2661 note. The Act provides for CMPs that meet the above definition, and are therefore subject to the inflation adjustment, in three instances: Sections 6(c), 6b, and 6c of the Act.[5]

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[1] The FCPIAA, Pub. L. 101–410 (1990), and the relevant amendments to the FCPIAA contained in the DCIA, Public Law 104–134 (1996), are codified at 28 U.S.C. 2461 note.

[2] The DCIA also requires that the range of minimum and maximum CMPs be adjusted, if applicable. This is not applicable to the Commission because, for the relevant CMPs within the Commission's jurisdiction, the Act provides only for maximum amounts that can be assessed for each violation of the Act or the rules and orders thereunder; the Act does not set forth any minimum penalties. Therefore, the remainder of this release will refer only to CMP maximums.

[3] Specifically, the FCPIAA states:

The purpose of [the FCPIAA] is to establish a mechanism that shall—

(1) Allow for regular adjustment for inflation of civil monetary penalties;

(2) Maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and

(3) Improve the collection by the Federal Government of civil monetary penalties.

[4] Section 13103(a) of the Farm Bill states:

(a) ENFORCEMENT POWERS OF THE COMMISSION.—Section 6(c) of the Commodity Exchange Act (7 U.S.C. 9, 15) is amended in clause (3) of the 10th sentence—

(1) by inserting ''(A)'' after ''assess such person''; and

(2) by inserting after ''each such violation'' the following:

'', or (B) in any case of manipulation or attempted manipulation in violation of this subsection, subsection (d) of this section, or section 9(a)(2), a civil penalty of not more than the greater of $1,000,000 or triple the monetary gain to the person for each such violation,''.

Section 13103(b) of the Farm Bill states:

(b) NONENFORCEMENT OF RULES OF GOVERNMENT OR OTHER VIOLATIONS.—

Section 6b of such Act (7 U.S.C. 13a) is amended—

(1) In the first sentence, by inserting before the period at the end the following: '', or, in any case of manipulation or attempted manipulation in violation of section 6(c), 6(d), or 9(a)(2), a civil penalty of not more than $1,000,000 for each such violation''; and

(2) In the second sentence, by inserting before the period at the end the following: '', except that if the failure or refusal to obey or comply with the order involved any offense under section 9(a)(2), the registered entity, director, officer, agent, or employee shall be guilty of a felony and, on conviction, shall be subject to penalties under section 9(a)(2)''.

Section 13103(c) of the Farm Bill states:

(c) ACTION TO ENJOIN OR RESTRAIN VIOLATIONS.—Section 6c(d) of such Act (7 U.S.C. 13a–1(d)) is amended by striking all that precedes paragraph (2) and inserting the following:

''(d) CIVIL PENALTIES.—

''(1) IN GENERAL.—In any action brought under this section, the Commission may seek and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation—

''(A) a civil penalty in the amount of not more than the greater of $100,000 or triple the monetary gain to the person for each violation; or

''(B) in any case of manipulation or attempted manipulation in violation of section 6(c), 6(d), or 9(a)(2), a civil penalty in the amount of not more than the greater of $1,000,000 or triple the monetary gain to the person for each violation.''

[5] 7 U.S.C. 9, 13a and 13a–1.

Penalties may be assessed in a Commission administrative proceeding pursuant to Section 6(c) of the Act, 7 U.S.C. 9, against ''any person'' found by the Commission to have:

(1) Engaged in the manipulation of the price of any commodity, in interstate commerce, or for future delivery;

(2) Willfully made a false or misleading statement or omitted a material fact in an application or report filed with the Commission; or

(3) Violated any provision of the Act or the Commission's rules, regulations or orders thereunder.

Penalties may be assessed in a Commission administrative proceeding pursuant to Section 6b of the Act, 7 U.S.C. 13a, against: (1) Any registered entity that the Commission finds is not enforcing or has not enforced its rules, or (2) any registered entity, or any director, officer, agent, or employee of any registered entity, that is violating or has violated any of the provisions of the Act or the Commission's rules, regulations or orders thereunder.

Penalties may be assessed pursuant to Section 6c of the Act, 7 U.S.C. 13a–l, against ''any person'' found by ''the proper district court of the United States'' to have committed any violation of any provision of the Act or any rule, regulation or order thereunder.

III. Relevant Cost-of-Living Adjustment

The formula for determining the cost-of-living adjustment, first defined by the FCPIAA, and amended by the DCIA, consists of a four-step process.

The first step entails determining the inflation adjustment factor. This is done by calculating the percentage increase by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.[6] Accordingly, the inflation adjustment factor for the present adjustment equals the Consumer Price Index for all-urban consumers published by the Department of Labor for June 2007 (i.e., June of the year preceding this year), divided by that index for June 2004.[7]

Once the inflation adjustment factor is determined, it is then multiplied by the current maximum CMP set forth in Rule 143.8 to calculate the raw inflation increase.[8] This raw inflation increase is then rounded according to the guidelines set forth by the FCPIAA.[9] Finally, once the inflation increase has been rounded pursuant to the FCPIAA, it is added to the current CMP maximum to obtain the new CMP maximum penalty.[10] As a result, the maximum, inflation-adjusted CMP for each violation of the Act or Commission rules or orders thereunder assessed against any person pursuant to Sections 6(c) and 6c of the Act will be $140,000 or triple the monetary gain to such person for each violation, and $675,000 for each such violation when assessed pursuant to Section 6b of the Act.

The FCPIAA provides that ''any increase under [FCPIAA] in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect.'' [11] Thus, the new CMP maximum may be applied only to violations of the Act that occur after the effective date of this amendment, October 23, 2004. The new statutory maximum for manipulation and attempted manipulation shall apply to violations that occur after the effective date of the Farm Bill, i.e., May 22, 2008.

IV. Related Matters

A. Notice Requirement

This amendment to Rule 143.8 will implement a statutory change regarding agency procedure or practice within the meaning of 5 U.S.C. 553(b)(3)(A) and therefore does not require notice.[12] The Commission also believes that opportunity for public comment is unnecessary under 5 U.S.C. 553(b)(3)(B). This amendment does not effect any substantive change in Commission rules, nor alter any obligation that a party has under Commission rules, regulations or orders. No party must change its manner of doing business, either with the public or the Commission, to comply with the rule amendment. This change is undertaken pursuant to a statutory requirement that all agencies make such adjustments and is intended to prevent inflation from eroding the deterrent effect of CMPs. The change also recognizes amendments to the Act contained in the Farm Bill.

While higher maximum CMPs may expose persons to potentially higher financial liability, in nominal terms, for violations of the Act or Commission rules or orders thereunder, the rule amendment does not require that the maximum penalty be imposed on any party, nor does it alter any substantive due process rights that a party has in an administrative proceeding or a court of law that protect against imposition of excessive penalties. Further, as previously noted, the rule amendment applies only to violations of the Act or Commission rules or orders that occur after the effective date of this amendment.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their rules on small businesses. The amended rule potentially will affect those persons who are found by the Commission or the Federal courts to have violated the

[6] The Consumer Price Index means the Consumer Price Index for all urban consumers (CPI–U) published by the Department of Labor. Interested parties may find the relevant Consumer Price Index over the Internet. To access this information, go to the Consumer Price Index Home Page at: *http://www.bls.gov/data/*. Under the Prices and Living Conditions Section, select Most Requested Statistics for CPI—All Urban Consumers (Current Series). Then check the box for CPI for U.S. All Items, 1967=100–CUUR0000AA0, and click the Retrieve Data button.

[7] The Consumer Price Index for all-urban consumers published by the Department of Labor for June 2007 was 624.129, and for June 2004 was 568.2. Therefore, the relevant inflation adjustment factor equals 624.129 divided by 568.2. The result is a 9.8 percent increase in the CPI between June 2003 and June 2007. Accordingly, our inflation adjustment factor is 9.8 percent, or 0.0984 for computational purposes.

[8] The current CMP maximum listed in Rule 143.8, as amended in 2004, for purposes of Sections 6(c) and 6c of the Act is $130,000. The current CMP maximum for purposes of Section 6b of the Act is $625,000.

Accordingly, the calculations for the raw inflation increase are the following:

Sections 6(c) and 6c: (0.0984 × $130,000) = $12,792

Section 6b: (0.0984 × $625,000) = $61,500

[9] The FCPIAA, as amended by the DCIA, provides in relevant part that any increase ''shall be rounded to the nearest—

(5) multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) multiple of $25,000 in the case of penalties greater than $200,000.''

Accordingly, the raw inflation increase for purposes of Sections 6(c) and 6c of the Act ($12,792) is rounded to $10,000, while the raw inflation increase for purposes of Section 6b ($61,500) is rounded to $50,000.

[10] For purposes of Sections 6(c) and 6c of the Act, the rounded inflation increase ($10,000) is added to the current CMP maximum ($130,000), totaling $140,000. For purposes of Section 6b of the Act, the rounded inflation increase ($50,000) is added to the current CMP maximum ($575,000), totaling $625,000.

[11] *See* also *Landgraf* v. *USI Film Products,* 511 U.S. 244 (1994) (holding that there is a presumption against retroactivity in changes to damage remedies or civil penalties in the absence of clear statutory language to the contrary).

[12] U.S.C. 553(b) generally requires notice of proposed rulemaking to be published in the **Federal Register**. That provision states, however, that ''[e]xcept when notice or hearing is required by statute, [notice is not required]—

(A) [for] interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''

Act or Commission rules or orders. Some of these affected parties could be small businesses. Nevertheless, the Acting Chairman, on behalf of the Commission, certifies that this rule will not have a significant economic impact on a substantial number of small entities. While the Commission recognizes that certain persons assessed a CMP for violating Act or Commission rules or orders may be small businesses, the rule does not mandate the imposition of the maximum CMP set forth in the rule on any party. As is currently the case, the imposition of the maximum CMP will occur only where the administrative law judge, the Commission or a Federal court finds that the gravity of the offense warrants a CMP in that amount.[13]

The rule should not increase in real terms the economic burden of the maximum CMPs set forth in the Act. Instead, the rule implements a statutory requirement that agencies adjust for inflation existing CMPs so that the real economic value of such penalties, and therefore the Congressionally-intended deterrent effect of such CMPs, is not reduced over time by inflation. Nor does the rule impose any new, affirmative duty on any party or change any existing requirements, and thus no party who is currently complying with the Act and Commission regulations will incur any expense in order to comply with the amended rule. Therefore, the Commission believes that this final rule will not have a significant economic impact on a substantial number of small entities.[14]

[13] Section 6(e) of the Act, 7 U.S.C. 9a(1), directs the Commission to ''consider the appropriateness of [a] penalty to the gravity violation'' when assessing a CMP pursuant to Section 6(c) of the Act. In addition, the Commission's penalty guidelines state that the Commission, when assessing any CMP, will consider the gravity of the offense in question. In assessing the gravity of an offense, the Community may consider such factors as whether the violations resulted in harm to the victims, whether the violations involved core provisions of the Act, and whether the violator acted intentionally or willfully, as well as other factors. See CFTC Policy Statement Relating to the Commission's Authority to Impose Civil Money Penalties and Futures Self-Regulatory Organizations' Authority to Impose Sanction; Penalty Guidelines, [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,265 (CFTC November 1994).

[14] Any agency that regulates the activities of small entities must establish a policy or program to reduce and, when appropriate, to waive civil penalties for violations of statutory or regulatory requirements by small entities. An agency is not required to reduce or waive civil penalties, however, if: (1) An entity has been the subject of multiple enforcement actions; (2) an entity's violations involve willful or criminal conduct; or (3) the violations involve serious health, safety or environmental threats. See Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), Public Law 104–121, § 223, 110 Stat. 862 (March 29, 1996). The Commission takes these provisions of SBREFA into account when it considers whether to seek or impose a civil monetary penalty in a particular case involving a small entity.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3507(d), which imposes certain requirements on Federal agencies, including the Commission, connection with their conducting or sponsoring any collection of information as defined by the PRA, does not apply to this rule. The Commission believes this rule amendment does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 17 CFR Part 143

Civil monetary penalty, Claims.

■ In consideration of the foregoing and pursuant to authority contained in Sections 6(c), 6b and 6c of the Act, 7 U.S.C. 9, 13a, and 13a–1(d), and 28 U.S.C. 2461 note as amended by Pub. L. 104–134, the Commission hereby amends part 143 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 143—COLLECTION OF CLAIMS OWED THE UNITED STATES ARISING FROM ACTIVITIES UNDER THE COMMISSION'S JURISDICTION

■ 1. The authority citation for part 143 reads as follows:

Authority: 7 U.S.C. 9 and 15, 9a, 12a(5), 13a, 13a–1(d) and 13(a); 31 U.S.C. 3701–3719; 28 U.S.C. 2461 note.

■ 2. Section 143.8 is amended by revising paragraph (a) to read as follows:

§ 143.8 Inflation-adjusted civil monetary penalties.

(a) Unless otherwise amended by an act of Congress, the inflation-adjusted maximum civil monetary penalty for each violation of the Commodity Exchange Act or the rules or orders promulgated thereunder that may be assessed or enforced by the Commission under the Commodity Exchange Act pursuant to an administrative proceeding or a civil action in Federal court will be:

(1) Except as provided in paragraph (v) hereof, for each violation for which a civil monetary penalty is assessed against any person (other than a registered entity) pursuant to Section 6(c) of the Commodity Exchange Act, 7 U.S.C. 9:

(i) For violations committed between November 27, 1996 and October 22, 2000, not more than the greater of $110,000 or triple the monetary gain to such person for each such violation;

(ii) For violations committed between October 23, 2000 and October 22, 2004, not more than the greater of $120,000 or triple the monetary gain to such person for each such violation;

(iii) For violations committed between October 23, 2004 and October 22, 2008, not more than the greater of $130,000 or triple the monetary gain to such person for each such violation; and

(iv) For violations committed on or after October 23, 2008, not more than the greater of $140,000 or triple the monetary gain to such person for each such violation; provided that—

(v) In any case of manipulation or attempted manipulation in violation of Section 6(c), 6(d), or 9(a)(2) of the Act committed on or after May 22, 2008, not more than the greater of $1,000,000 or triple the monetary gain to such person for each such violation; and

(2) Except as provided in paragraph (v) hereof, for each violation for which a civil monetary penalty is assessed against any registered entity or other person pursuant to Section 6c of the Commodity Exchange Act, 7 U.S.C. 13a–l:

(i) For violations committed between November 27, 1996 and October 22, 2000, not more than the greater of $110,000 or triple the monetary gain to such person for each such violation;

(ii) For violations committed between October 23, 2000 and October 22, 2004, not more than the greater of $120,000 or triple the monetary gain to such person for each such violation;

(iii) For violations committed between October 23, 2004 and October 22, 2008, not more than the greater of $130,000 or triple the monetary gain to such person for each such violation; and

(iv) For violations committed on or after October 23, 2008, not more than the greater of $140,000 or triple the monetary gain to such person for each such violation; provided that—

(v) In any case of manipulation or attempted manipulation in violation of Section 6(c), 6(d), or 9(a)(2) of the Act committed on or after May 22, 2008, not more than the greater of $1,000,000 or triple the monetary gain to such person for each such violation;

(3) For each violation for which a civil monetary penalty is assessed against any registered entity or any director, officer, agent, or employee of any registered entity pursuant to Section 6b of the Commodity Exchange Act, 7 U.S.C. 13a:

(i) For violations committed between November 27, 1996 and October 22, 2000, not more than $550,000 for each such violation;

(ii) For violations committed between October 23, 2000 and October 22, 2004, not more than $575,000 for each such violation;

(iii) For violations committed between October 23, 2004 and October 22, 2008, not more than $625,000 for each such violation; and

(iv) For violations committed on or after October 23, 2008, not more than the greater of $675,000 or triple the monetary gain to such person for each such violation, provided that—

(v) In any case of manipulation or attempted manipulation in violation of Section 6(c), 6(d), or 9(a)(2) of the Act committed on or after May 22, 2008, not more than the greater of $1,000,000 or triple the monetary gain each such violation.

* * * * *

Issued in Washington, DC, on September 30, 2008 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E8–23417 Filed 10–2–08; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 131, 154, 157, 250, 281, 284, 300, 341, 344, 346, 347, 348, 375 and 385

[Docket No. RM01–5–000; Order No. 714]

Electronic Tariff Filings

Issued September 19, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is revising its regulations to require that all tariffs and tariff revisions and rate change applications for the public utilities, natural gas pipelines, oil pipelines and power administrations be filed electronically according to a set of standards developed in conjunction with the North American Energy Standards Board. This rule is part of the Commission's efforts to comply with the Paperwork Reduction Act, the Government Paperwork Elimination Act (GPEA), and the E–Government Act of 2002 by developing the capability to file electronically with the Commission via the Internet. Electronic filing reduces physical storage space needs and document processing time, provides for easier tracking of document filing activity; potentially reduces mailing and courier fees; allows concurrent access to the tariff filing by multiple parties as well as the ability to download and print tariff filings; and provides automatic e-mail notification to an applicant of receipt of the filing and whether or not it has been accepted. Upon implementation of this rule, the Commission will no longer accept tariff filings submitted in paper format.

DATES: *Effective Dates:* This rule will become effective November 3, 2008. Implementation will begin April 1, 2010 pursuant to a six month staggered schedule.

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SUPPLEMENTARY INFORMATION:

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Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

1. The Commission in the last several years has expanded its capability to accept electronic filings. As part of this process, the Commission has sought to develop a means by which publicly regulated utilities could file tariffs, rate schedules, and other jurisdictional contracts and agreements electronically in a fashion that would permit the Commission to assemble and organize the disparate pieces of these agreements for display and for use by the Commission and the public. Commission staff in collaboration with the wholesale electric and gas quadrants of the North American Energy Standards Board (NAESB), and representatives from the Association of Oil Pipelines (AOPL) developed a set of standards to be used by companies in making tariff and tariff related filings at the Commission. The Commission is adopting these standards as the requirement for making tariff and tariff related filings.

I. Background

2. The development of these standards began in 2004 with a Notice of Proposed Rulemaking [1] in which the Commission proposed to require public utilities, power administrations, interstate and intrastate gas pipelines, and oil pipelines to file tariff and tariff related material electronically. The Commission proposed to develop an electronic tariff database to store tariff and tariff related information for retrieval by Commission staff and the public. In order to implement a tariff database system that would permit such functionality, Commission staff developed a software system for tariff filings similar to that used in filing forms with the Commission. Commission staff worked with many industry representatives and experts to test this software and held public meetings to demonstrate and receive comment on the software.

3. While some commenters supported using the Commission-provided software as an acceptable solution, others were concerned that this software might not work well for making tariff filings. Some also were concerned that the Commission software would not integrate well with their existing tariff management systems and that formatting tariffs to fit the parameters of the software could be difficult or time consuming.

4. As a result of the review of the comments, on February 1, 2007, a public meeting was held with NAESB to discuss NAESB's assistance in the process of developing the protocols, standards, and data formats needed to provide tariff and related data to enable the Commission to develop a database to track electronic tariff and rate schedules filings. At the meeting, NAESB agreed to develop these standards and report back to the Commission.

5. NAESB established two committees, a business eTariff Subcommittee and an eTariff Technical Task Force. These committees included representatives from the wholesale natural gas industry, wholesale electric industry, oil pipelines, intrastate natural gas pipelines, and third party software developers who worked along with Commission staff to develop the applicable standards. Between February 1, 2007 and January 23, 2008, these committees held a total of 16 meetings in various cities over 24 days. Total attendance in all the meetings was 991 participants either in person or by electronic conferencing, with an average attendance of 62 people for each meeting.

6. The committees determined not to use the Commission developed software, but instead to develop standards that would enable individual companies to develop or procure software for making tariff filings that would best meet the needs of each company's business requirements. The Executive Committees for both the Wholesale Gas and Wholesale Electric Quadrants of NAESB approved the standards on March 4, 2008, and the NAESB membership ratified the standards on April 4, 2008.

7. On April 15, 2008, NAESB filed the standards with the Commission along with a record of the NAESB proceedings. This material included questions about the policies to be followed in using the standards to make tariff filings. NAESB also provided a copyright waiver stating: ''While the eTariff standards are copyrighted by NAESB, a limited waiver is granted to the FERC to modify and post any excerpts of the eTariff standards and eTariff work products that they deem appropriate. These excerpts will be available for companies to reproduce only for their own internal use.''

8. On April 17, 2008, the Commission issued a Supplemental Notice of Proposed Rulemaking (NOPR) proposing to use the NAESB developed standards as the means to effectuate electronic tariff filing.[2] The NOPR also proposed solutions to several issues raised during the NAESB process, such as the filing process for shared and joint tariffs. Twenty comments were filed, with most generally favoring the use of the NAESB standards.[3]

II. Discussion

9. As the background indicated, this proceeding has followed a long and winding road, with a number of detours and U-turns, but we have reached the end of the road and are adopting a final set of standards for electronic tariff filings.[4] We again want to thank

[1] *Electronic Tariff Filings,* Notice of Proposed Rulemaking 69 FR 43,929 (July 23, 2004) FERC Stats. & Regs., Proposed Regulations 2004–2007 ¶ 32,575 (2004) (2004 NOPR), *Notice of Additional Proposals and Procedures,* 70 FR 40941 (July 15, 2005), FERC Stats. & Regs. ¶ 35,551 (2005) (2005 Notice). The 2004 NOPR was the result of an earlier Notice of Inquiry and Informal Conference in this same proceeding (*Electronic Tariff Filings,* 66 FR 15673 (March 20, 2001), FERC Stats. & Regs. ¶ 35,538, at 35,789–91 (2001)).

[2] As used in this Final Rule, the ''NAESB standards'' or ''standards'' refer to a set of data elements and requirements that are posted on the Commission Web site. *Instruction Manual for Electronic Filing of Parts 35, 154, 300, 341 and 284 Tariff Filings.* (*http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=11683627*)

[3] Appendix A lists the commenters and the abbreviations used for each.

[4] *Smith* v. *Lachter (In re Smith),* 352 B.R. 702 (B.A.P. 9th Cir. 2006) (''This matter is reminiscent

NAESB, its Board of Directors, and the numerous volunteers from across the spectrum of the gas, electric, and oil industries who were able to meet with staff and develop a set of standards and protocols that will achieve the Commission's goal of establishing a robust electronic filing environment for tariffs and tariff related material and will make it possible for the Commission staff and the public to retrieve this material from a database. We will adopt the standards and protocols developed through the NAESB collaborative process in place of providing Commission-created software. Adoption of these standards and protocols will provide each company with enhanced flexibility to develop software to better integrate tariff filings with their individual tariff maintenance and business needs. These standards and protocols also will provide an open platform permitting third-party software developers to create more efficient tariff filing and maintenance applications, which will spread the development costs over larger numbers of companies.

10. Over the last few years, the Commission has greatly expanded its ability to accept electronically filed material, including interventions, protests, rehearings, complaints, and applications for certificates and licenses.[5] We now are expanding these filings to include tariffs and tariff-related material, which comprise a large portion of the Commission's workload. But tariff filings raise special challenges that our current filing systems do not address. eLibrary is designed and works extremely well as a repository that stores, and permits retrieval of, all documents filed in individual docketed proceedings. But while an individual tariff filing is made in an individual docket, the tariff itself is an organically changing document that is comprised of individual filings made in many different dockets over time. In order for the Commission and the public to obtain a complete picture of a company's tariff, these various provisions need to be integrated into a single system that will provide information as to the status of tariff provisions, permit the assembly of a complete tariff, and permit tariff related research. Indeed, for tariffs filed on paper, the Commission has managed these tariffs as a database by keeping tariff books, open to the public at our headquarters, in which new pages are inserted to replace old pages to reflect revisions, and such changes are recorded in ''numbering'' sheets to ensure that the tariff reflects the currently effective tariff.[6] The standards we are adopting in this Final Rule merely replace this paper system with a very similar electronic database that will similarly track the tariff submissions and tariff history, but in a form that will make tariff information more widely available over the Internet.

11. The database will provide easier access to tariffs and allow the viewing of proposed tariff sections in context. One of the principal benefits of such a database is the ability to do historical research into tariffs. For example, proceedings such as complaints may involve past tariff provisions that have already been revised by the utility by the time the complaint is considered by the Commission. In order to expeditiously process such filings, the Commission, the parties, and the public need to be able to obtain the tariff provision that applies to the time period under review, rather than the currently effective tariff provision. In fact, the effectiveness of tariff provisions arises in a number of contexts, particularly in complaint cases, in which the Commission and the participants need to know the effective tariff at a particular point in time.[7]

12. The set of NAESB standards provides a foundation for building such a database. The standards define an extensible markup language (XML) schema[8] that will permit filers to assemble an XML filing package that includes the tariff changes, the accompanying tariff-related documents, such as the transmittal letter, rate schedules, and spreadsheets that are required to accompany various tariff filings, and other required information such as the proposed effective date of the filing. Upon the receipt of the filing electronically, the XML schema will enable the Commission to parse[9] (divide) the filed package into its component parts, place the filed documents into its eLibrary system and provide the metadata[10] that will permit automated organization of the tariff and permit the Commission and the public to search that database. As an example of the expanded public access to tariffs, the Commission currently provides electronic access to approximately 150 NGA interstate pipeline tariffs utilizing the FASTR standards. That access under the NAESB standards should expand to at least 1600 companies' tariffs. The NAESB standards also will provide flexibility to companies making tariff filings by enabling each regulated company to design or purchase software for creating tariff filings that will best accommodate its filing patterns and needs.

13. Some of the principal requirements of the standards and regulations being adopted here are:

- Tariffs[11] may be filed either using the current sheet based nomenclature or using section-based numbering at the choice of the filer.[12]
- Tariffs may be filed as entire documents in either of two electronic formats, RTF[13] or

of that old Beatles' standard, 'The Long and Winding Road,' a brooding song about a road that never ends. One can only hope that, with this opinion, the end of the road is indeed in sight'').

[5] *See Electronic Registration,* Order No. 891, 67 FR 52,406 (Aug. 12, 2002), FERC Stats. & Regs. ¶ 31,132 (2002); *Electronic Filing of FERC Form 1,* and Elimination of Certain Designated Schedules in Form Nos. 1 and 1F, Order No. 626, 67 FR 36,093 (May 23, 2002), FERC Stats. & Regs. ¶ 31,130 (2002); *Electronic Service of Documents,* 66 FR 50,591 (Oct. 4, 2001), FERC Stats. & Regs. ¶ 35,539 (2001); *Revised Public Utility Filing Requirements,* Order No. 2001, 67 FR 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002); *Electronic Filing of Documents,* Order No. 619, 65 FR 57,088 (Sept. 21, 2000), FERC Stats. & Regs. ¶ 31,107 (2000); *Electronic Notification of Commission Issuances,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,574 (2004); *Filing Via the Internet,* Order No. 703, 72 FR 65,659 (Nov. 23, 2007), FERC Stats. & Regs. ¶ 31,259, P 33 (2007) (Order No. 703).

[6] In fact, companies often arrange to view their own tariffs to try and recreate either effective tariffs or the tariff in effect during the time period of a particular proceeding.

[7] *See FPL Energy Marcus Hook, L.P.* v. *PJM Interconnection, LLC,* 123 FERC ¶ 61,289, at P 39 n.77, 77–80 (2008) (in a complaint case, the complainant and all other parties relied on the current version of a tariff provision rather than the provision in effect at the time).

[8] XML schemas facilitate the sharing of data across different information systems, particularly via the Internet, by structuring the data using tags to identify particular data elements. For example, each filed tariff change will include tags for the relevant information, such as the utility name, the tariff section being changed, the name for that section, the proposed effective date, and certain sections of tariff text. The tagged information can be extracted and separately searched.

[9] Parse means to capture the hierarchy of the text in the XML file and transform it into a form suitable for further processing.

[10] The term metadata is based on the Greek word ''meta'' meaning after or beyond and in epistemology means ''about.'' Thus, metadata is data or information beyond or about other data. Digital Libraries, by William Arms (M.I.T. Press 2000), *http://www.cs.cornell.edu/wya/DigLib/MS1999/Chapter1.html* (visited April 11, 2008); The University of Queensland, *http://www.library.uq.edu.au/iad/ctmeta4.html* (visited April 11, 2008); The Linux Information Project, *http://www.linfo.org/metadata.html* (visited April 11, 2008). For example, in the XML schema, one required element is a proposed effective date and another element is the text of the tariff provision. The proposed effective date would be considered metadata relative to the tariff text.

[11] The term tariff is used herein to refer to tariffs, rate schedules, jurisdictional contracts, and other jurisdictional agreements that are required to be on file with the Commission.

[12] Section-based filings will not have to include the sheet based nomenclature as a header or footer on the tariff page.

[13] RTF refers to Rich Text Format which is a standardized textual format that can be produced by a number of word processors.

PDF,[14] except with respect to open access transmission tariffs for electric utilities and interstate natural gas companies which would have to be filed as individual sheets or as sections in RTF format as defined in the regulations.

- Tariff filings can be served electronically using the same approach used for electronic service of other Commission filings.
- Filings of joint tariffs (tariffs covering two regulated entities) may be made with a single tariff filing by the entity designated to make the filing.
- Tariff filings for tariffs shared among companies (such as regional transmission organization (RTO) tariffs) can be made individually by any of the companies with rights to file tariff changes.
- During initial baseline implementation of electronic tariff filing, only open access transmission tariffs (OATTs) and agreements need to be filed.
- After implementation of electronic tariff filing, all new tariffs and agreements must be filed using the standards. Existing agreements need to be filed electronically only when they are revised.

14. Although the comments generally supported the adoption of the NAESB standards, some commenters suggested the adoption of alternative approaches. As the Commission has previously stated: ''Standardization, by definition, requires accommodation of varying interests and needs, and rarely can there be a perfect standard satisfactory to all.'' [15] We find that the NAESB standards best accommodate the needs of regulated utilities in making filings electronically and the needs of the Commission and the public for an electronic system that will enable efficient, user-friendly retrieval of tariffs. We will discuss below the technical requirements applicable to electronic tariff filing and the comments received on various aspects of the standards.

A. Electronic Filing Requirements

1. Companies Required To File Tariffs Electronically

15. The companies or entities covered by this Final Rule are those that submit tariffs, rates, or contracts with the Commission pursuant to the Natural Gas Act (NGA), the Natural Gas Policy Act of 1978 (NGPA), the Federal Power Act (FPA), the Interstate Commerce Act (ICA), the Flood Control Act, the Bonneville Power Act, the Northwest Power Planning Act, and other relevant statutes. Included among the companies or entities covered by the requirements are: RTOs and independent system operators (ISOs); power authorities and federal power marketing administrations which file rates, contracts, or tariffs at the Commission; intrastate natural gas pipelines that file rates and operating conditions pursuant to the NGPA; interstate natural gas pipelines subject to the NGA which serve only an industrial customer; and companies or entities that may make voluntary tariff filings, such as reciprocity filings pursuant to Order No. 888.

2. Procedures for Making Tariff Filings

16. Using the new XML schema, companies, and all those authorized to make filings on behalf of the company, such as outside counsel, will make tariff related filings using the existing eFiling portal. As described below, the filing process will be modified slightly from the current eFiling process, in particular to include a company registration that will provide increased security for the filing, as well as additional e-mail notifications of potential problems with the filing.

17. The person making a tariff filing must have previously registered in eFiling (Filer). Upon successfully logging into the FERC eFiling portal, the Filer will be presented with the introductory screen indicating success in accessing the site, and presented with a link to the filing creation part of the site, which will include an option to make a Tariff filing (eTariff portal).

18. The eTariff portal will prompt the Filer to enter the company identification number assigned during the company registration process and an associated password. After successfully passing this step, the Filer will upload an eTariff XML filing package that conforms to the XML schema. Once the filing is uploaded, the eFiling web page will indicate the filing has been submitted.

19. After the filing has been submitted, a Confirmation of Receipt will be e-mailed to both the e-mail address of the Filer and to the e-mail address on file with FERC for the company identification number. This e-mail only acknowledges the receipt of the filing through the eFiling portal, provides a timestamp, and indicates that the filing is placed in the queue to be processed.

20. The XML filing package will be validated programmatically by an eTariff verification process. Depending upon the success of the verification process, a number of e-mails will be sent.

- If the verification is completed successfully, an e-mail will be sent to the validation e-mail address provided in the XML package and to the e-mail address associated with the company whose tariff is being revised.[16] This e-mail means only that the filing has passed the validation, not that it has been officially accepted by the Secretary of the Commission.
- If the XML filing package can be parsed (and the validation e-mail address can be obtained), but the package does not otherwise pass verification, an e-mail will be sent to the validation e-mail address provided in the XML filing package. This e-mail will provide information about the problems encountered during the verification process.
- If the XML filing package cannot be parsed at all (is unreadable), an e-mail will be sent to the Filer and to the e-mail address associated with the company identification number indicating a problem has been encountered with the filing.

21. Once passed validation, the standard eFiling e-mail will be sent to indicate whether the Secretary of the Commission has accepted and docketed the filing or rejected it. As occurs with all filings, the docketing e-mail does not guarantee that other filing deficiencies will not result in rejection or other action pertaining to the filing later in the review processes within the Commission. After this step, the filing is passed on to eLibrary, the tariff database and other Commission systems.

22. INGAA requests that the Commission establish a procedure for submission of tariff filings in the event of an electronic failure of the Commission's eFiling and eTariff system. Such a request is beyond the scope of this rulemaking. In Order No. 703, the Commission delegated to the Secretary of the Commission the authority to develop procedures for electronic filing, including procedures to be followed in case of an electronic failure of the eFiling system.[17] Since the tariff filing component will be a part of the eFiling system, the same procedures followed by the Secretary for electronic failure will apply to eTariff as well.

3. XML Schema and Tariff Database

23. Under the standards, the tariff filing must be made in conformance with the XML schema. The schema essentially is a method by which the filing entities can communicate information to the Commission. The schema proscribes the metadata elements and the textual information that must be included in the filing

[14] PDF refers to Portable Document Format which is a format used for representing documents that closely resembles the original formatting of the document.

[15] *Standards For Business Practices Of Interstate Natural Gas Pipelines,* Order No. 587, 61 FR 39,053, 39,057 (July 26, 1996), FERC Stats. & Regs. ¶ 31,038, at 30,059 (1996).

[16] This may not be the same company making the filing; for example, in the case of a shared tariff, one notification will go to the company making the filing and the other will go to the ISO or RTO whose tariff is being revised.

[17] *Filing Via the Internet,* Order No. 703, 72 FR 65659, FERC Stats. & Regs. ¶ 31,259, at P 33 (2007).

package. The data elements included in the XML package are required to properly identify the nature of the tariff filing, organize the tariff database, and maintain the proper relationship of tariff provisions in relation to other provisions. For example, these elements will identify which tariff provision is being revised so that the revised tariff provision can be placed electronically in the proper location within the tariff hierarchy. The filing package itself will include the text of tariff changes as well as all filing attachments, such as transmittal letters.[18] The XML schema will be maintained on the Commission Web site along with the required codes, descriptions, and other requirements, as well as information that may be useful to those developing filing software.[19] Contemporaneously with the issuance of this Final Rule, we are posting on the Web site the XML schema along with the descriptions of the fields used in the schema, the instruction manual and codes to be used with the XML schema.

24. Although we do not envision that the schema and related code values will need to be changed frequently, the Secretary of the Commission, under Order No. 703, has delegated authority to make modifications to them if necessary.[20] Before any such changes are made, a notice of the proposed change will be issued sufficiently in advance to permit companies to revise their software.

25. A few commenters object to the use of the XML schema for electronic filing and argue that the Commission should simply rely on filings in eLibrary.[21] They argue that documents are maintained in standard word processing formats and that filing such tariffs through eLibrary would be easier on the filer. They assert that any tracking of such filings could be accomplished by assigning a docket number. Nevada Power, for example, argues that managing tariffs is a document management, rather than a database function. It maintains that the ability to access prior tariffs can be solved by retaining all previous effective versions of the tariff.

26. As explained above, eLibrary is principally a system that manages and tracks filed documents based on individual proceedings (dockets). It was neither designed, nor will it function well, to retrieve individual sections or pages of tariffs that are filed in different dockets over the course of many years. The tariff database, on the other hand, will enable the Commission staff, as well as the public, to access all or portions of a company's tariffs and rate schedules compiled using date, text, and status criteria.

27. The use of a database to track individual pages or sections of tariffs is not inappropriate to the task of managing tariffs, as the comments suggest. The Commission has for over twenty years maintained the FASTR database for gas tariff filings and has made the results of that database available to the public. The XML schema on which the industry agreed will update the FASTR methodology to provide an even more effective database for managing tariffs and conducting tariff searches.

28. Some commenters suggest assigning a docket or other unique number to each tariff or rate schedule, and Nevada Power suggests that instead of an electronic database, each utility could file an updated history of changes to its tariff so that customers can determine where to find specific sheets in which they are interested. Nevada Power attached, as an example of its proposal, a history for its OATT that is only six pages long covering a relatively small number of tariff filings.

29. These solutions would require users to search through reams of filing materials to obtain the particular section or page of the tariff that they need. Such solutions are not a reasonable substitute for a database, given the large number of gas, oil, and electric companies, some of whom may make hundreds of tariff filings a year, with a list of changes that would eventually grow to hundreds of pages using the Nevada Power approach. PJM Interconnection, LLC for example made over 130 tariff related filings in a one year period. Trying to keep track of, and find, particular tariff provisions in this massive amount of data using only a docket or other numeric identifier and a spreadsheet would be a monumental task.[22] But the tariff database, using the metadata supplied with each filing, will be able to store and retrieve this information.

30. Those arguing for an eLibrary approach envision that tariff documents would not be filed in individual sections, but as entire documents. But not all industry members supported this entire document approach. The gas pipelines, for example, supported the continued use of sheet-based filings in which utilities file only the specific tariff sheet that is being revised.[23] Other tariffs are so large that filing them as a single document would be unwieldy.[24] The flexibility to file tariffs using different approaches was key to developing the NAESB standards, and the industry consensus supporting those standards.[25] The approach suggested by the commenters would not provide the flexibility the industry sought. The use of a database utilizing the NAESB standards provides that flexibility and is the most efficient method of processing such filings in a way that will permit the easy and efficient integration of such individual filings into an entire tariff.

31. As we have discussed above, the development of standards requires cooperation and accommodation between companies with different needs and requirements. The NAESB process provided a means by which various members of the affected industries and customers, including those from the oil pipeline industry, could develop a set of standards that reasonably meet the needs of a large range of different types of tariff filers, large and small companies, frequent and infrequent tariff filers, companies using different methods of storing tariffs, including databases, word processing software, and spreadsheets. After examining a variety of alternative approaches over 24 days of meetings, a consensus of the gas and electric industry [26] agreed upon the use of the data elements and XML schema as the most efficient means for

[18] The XML package must be filed as a zip (compressed) file.

[19] Currently located at *http://www.ferc.gov* under the tab Documents and Filings, eTariff.

[20] 18 CFR 375.302(z).

[21] Duke Energy, EEI, Nevada Power, Southern California Edison, and PSEG.

[22] Nevada Power's listing is similar to the Commission's current numbering sheets used in its paper tariff database. These numbering sheets run to 70 linear feet for all utilities. Using such a system to research extensively revised tariffs is difficult, time consuming, and prone to error.

[23] Minutes of February 1, 2007 eTariff Meeting, (''Ms. Nagle [Tennessee Gas Pipeline] asked whether FERC Staff supported using a section-based tariff system (in lieu of a sheet based system) and if so does everyone need to move to the section-based system''), *http://www.naesb.org/pdf2/etariff020107fm.doc*.

[24] For example, PJM's posted tariff is over 8 megabytes. *http://www.pjm.com/documents/agreements.html*, and the California ISO's tariff is over 4 megabytes. ISO New England (*http://www.iso-ne.com/regulatory/tariff/index.html*) and the New York ISO (*http://www.nyiso.com/public/documents/tariffs/oatt.jsp*) post tariffs that already are divided into sections.

[25] Minutes of July 27, 2008 eTariff Meeting, at P 5 (''flexibility is present to support whole document filings, sheet based filings and section based filings. This flexibility is provided for individual companies and for the industries themselves, as a given company may choose to use any of the three choices depending on the filing to be made. This flexibility is a key underlining assumption from which all the work papers were developed and as such, was reflected in the vote just taken''), *http://www.naesb.org/pdf3/etariff072707fm.doc*.

[26] Although the oil pipelines and their customers did not have an official vote during the NAESB process, they participated in formulating the requirements and have supported the data elements and XML schema in their comments in this rulemaking.

electronically filing tariffs.[27] We therefore will adopt the database approach and standards as approved through the NAESB process.

32. CAISO asks that the RTOs not be required to provide all the metadata required by the standards or, if it is not possible to eliminate the metadata, that such metadata be kept to a minimum. The technical meetings with NAESB were designed to develop the minimum required metadata that would be necessary to feed and operate the database. The CAISO has not indicated specific metadata elements that can safely be eliminated and still maintain the integrity of the database.

B. Tariff Filing Requirements

33. The Commission's current regulations require companies to file tariff sheets that include specifically defined nomenclature to identify each sheet of the tariff.[28] A company is required to file only the tariff sheets containing the tariff revisions or changes.

34. Based on the NAESB meetings and the comments submitted, we will allow far more flexibility in the structure and identification of tariffs. Companies may determine to structure their tariffs either using the existing tariff sheet format or as sections. Companies will also be given more flexibility to file tariffs either by dividing the tariff into sheets or sections and filing only the revised sheet or section, or for a wide range of tariff documents, by filing the entire tariff document that is revised. In order to ensure that the Commission and the public have the ability to identify specific tariff provisions, versioning information is required to be included as part of the XML package. But, this information has been simplified and will no longer need to be included as text on individual sheets or sections, with the exception of certain documents filed as PDFs.

1. Sheet or Section Filing Requirements

35. In order to compile the tariff database, the standards require companies to file tariff text as a specific data element. Companies, however, will be permitted to choose whether to continue to number tariff provisions as individual tariff sheets (*e.g.*, Sheet No. 1) or sections (*e.g.*, Section 1.1.1). Except as discussed in the following section with respect to open access tariffs, companies will be allowed to determine based on the nature of the tariff and frequency of filing whether to file tariffs by breaking the tariff into sheets or sections or by filing the tariff as an entire document. Companies that initially file using the entire document option will be allowed later to divide the tariff document into sections or sheets. However, a company that has already broken its tariff into sections or sheets, will not be able to recompile those sheets or sections and use the entire document option unless a company files a request for waiver.

36. The NAESB standards provide that tariff text must be filed either using the RTF file format or the PDF file format.[29] Tariffs filed under the entire document option may be filed either in RTF or PDF. Tariffs filed as sections or sheets must be filed in RTF, due to limitations on the ability to process and assemble PDF files.[30]

37. The comments support the flexibility to use sheet, section, and entire document options using PDF format.[31] AOPL for example ''strenuously supports this aspect of the rule which provides benefits to both shippers and pipelines.'' [32]

38. TransCanada asks that the Commission clarify whether and under what conditions companies that initially file using the sheet-based option may be allowed to later re-file using the section-based option, and vice-versa. For both the shipper and Commission staff benefit, we certainly would not encourage utilities to switch back and forth frequently between a sheet and a section-based system, because such a change will make the ability to research past provisions more difficult.[33] But because both the sheet and section approaches provide equivalent granularity and flexibility for users, utilities can make such a change without obtaining special permission. The only time special permission is required is if a utility wants to covert from a sheet or section based approach to entire document, because such a change does reduce usability.

39. AGA requests that tariffs be fully text searchable. As described above, all tariffs, including those filed using PDF, must be filed in text searchable format.

2. Gas and Electric Open Access Transmission Tariffs

40. Tariffs for interstate natural gas pipelines and electric utilities must be filed by breaking the document into sheets or sections. Unlike individual service agreements or contracts that affect only the signatories to the agreements, the open access transmission tariffs affect a wide variety of customers and are the most frequently revised. Moreover, because of the breadth of these tariffs, and the need to review and research portions of these tariffs, it would not be efficient for staff or for the public to have these documents refiled in their entirety every time a company proposes to revise an individual tariff section or page.

41. We are revising §§ 35.9 and 154.102 to require that open access transmission tariffs, which will include other open access documents and documents of general applicability, such as ISO/RTO operating agreements and market rules, must be filed as sheets or sections. Because the electric OATTs are based on the Commission's pro forma OATT, we have specified the minimum required divisions for such filings. For non-ISO/RTO OATTs, the OATT must be divided at least at the section 1.0 level, with individual sections for each schedule or attachment. Because ISO/RTO OATTs are much more complex, ISO/RTOs will be required to divide their OATTs at the 1.1 level at a minimum. Filers are encouraged to use even smaller divisions that are appropriate to their individual tariffs and filing patterns. In addition, to aid electric utilities in filing their OATTs, we are posting on our Web site a pro forma OATT divided into the largest

[27] APS, an active participant in the beta testing of the Commission's original software, as well as a participant in the NAESB process, recognizes that the standards provide ''a useable platform for industry compliance with the new standardized requirements for electronic filing of tariff, as well as a convenient tool for market participants and FERC staff to access and review tariffs and agreements * * * [and this methodology] to be the superior choice to implement this Commission requirement.'' APS Comment, at 2. AOPL similarly recognizes that compromises were necessary to meet the needs of all the industries, stating the standards ''reflect significant improvements to the proposed electronic filing regulations, in light of the particular circumstances and needs of the oil pipeline industry.'' AOPL Comment, at 1.

[28] 18 CFR 35.9; 154.102(e).

[29] The requirements adopted by the Commission in Order No. 703 will apply to PDF formatted documents filed as tariff text. Tariffs filed in PDF format must use the print-to-pdf feature as opposed to an unsearchable scanned format, except that tariff documents existing only on paper may be scanned into PDF. Order No. 703, FERC Stats. & Regs. ¶ 31,259 at P 23. We, however, encourage filers that scan old paper tariff documents to use an optical character recognition program to convert the scanned file to text prior to filing, so that copy and paste and search functions may be used.

[30] RTF is a text format that will enable the Commission's software to assemble quickly the sheets or sections into a complete tariff document. In contrast, PDF is not a textual format, and does not permit such processing.

[31] Midwest ISO, INGAA, and AOPL.

[32] AOPL Comment, at 4.

[33] The database will store each sheet or section so that a user wishing to examine a past sheet or section can do so. If the utility decides to change between sheets and sections, the prior history of a particular provision may be more difficult to access. For example, in a sheet to section change, the past sheet (record) will still appear in the database, but it will not be linked to the section (record) that will replace it.

allowable sections, as well as information that will help companies develop Microsoft® Word macros to electronically divide tariffs at this level.

42. Because we have not specified a pro forma interstate natural gas transportation tariff, the regulation we adopt requires that the interstate natural gas pipeline open access tariffs filed as sections be divided so that each section includes only related subject matter and is of reasonable length.[34] Negotiated rate agreements and other non-conforming service agreements need not be divided, but can be filed as entire documents.

43. EEI requests that non-RTOs be allowed to file their OATTs as single documents, maintaining that these are relatively static documents and that allowing the filing of an entire document will reduce the time and expense necessary to break such tariffs into sections and may simplify the filing software that such companies need to build or acquire.

44. We will not relax the requirement to at least divide the pro forma OATTs at the 1.0 level. As described above, OATTs can be large and unwieldy documents and run to over 160 pages; dividing the document at the 1.0 level will ensure that Commission staff and the public can review and search for tariff provisions relating to the same subject matter. Dividing the OATT at the 1.0 level will result in only 57 sections, each addressing a different topic, and such division will only have to be done once. Moreover, EEI maintains that most OATTs are maintained as Microsoft Word documents. Commission staff has developed and will post a macro that in many cases will divide the OATT at the appropriate level. Commission staff also has posted a pro forma OATT divided into the requisite sections that can be used as a reference. Creating the sectionalized pro forma OATT manually only took one hour. In balancing the burden of a one-time conversion of an OATT into individual sections against the benefits of being able to easily locate and search for specific OATT sections, we find that the benefits of requiring that OATTs be broken into sections outweigh the costs.

45. AGA argues that the Commission should set a minimum requirement for gas pipelines similar to that set for electric utilities and suggests that the minimum should at least match the table of contents and include as a separate section each topic listed under General Terms and Conditions of Service. We find that this suggestion does provide useful guidance as to the minimum sections required and therefore revise the regulation in § 154.102 accordingly.

3. Versioning

46. The Commission currently requires each tariff page to include a version number that can be used to identify the particular revision of that page (*e.g.*, First Revised Sheet No. 1 would replace Original Sheet No. 1). Because tariff provisions change, often frequently, this convention is useful over time for identifying and referring to particular tariff provisions in orders. With the adoption of the NAESB standards, the versioning requirement will be modified and made less complicated.

47. The NAESB standards require that each sheet, section, or entire tariff document be identified with a version number in an x.y.z format.[35] The x.y.z format will accommodate the same level of identification as our existing nomenclature, including items such as squeezed and retroactive sheets. As long as each tariff section, sheet, or entire document is identified uniquely, companies can choose how complex to make their identification. Some companies may want to continue this detailed approach to better identify the placement and relative position of tariff sheets and sections, and the x.y.z format will accommodate such identification. Other companies may not choose to include such a detailed hierarchy of changes. Companies, for example, may choose simply to numerically number each section, sheet, or entire tariff document as they file it, using just the x field.

48. As proposed in the NOPR, and adopted in this Final Rule, identification of versioning need not be included in the text of the individual tariff revisions that are filed with the exception of tariffs filed in PDF format. Companies however may choose to include such identification in the tariff text if they desire. The XML schema requires that the requisite versioning information be included as metadata, and versioning information will be made available to staff and the public in the tariff database. Moreover, to ensure that the versioning information is available to the public on eLibrary, the Commission will use the metadata provided in the XML package to generate a document on eLibrary that contains the appropriate versioning information. Because we are creating this document by electronically combining information from the XML package, the formatting of the versions and tariff text may not appear identical to the filing made by the company.

49. The only exception to this rule is for tariff documents filed using PDF. Because PDF is not a textual format and does not permit easy electronic manipulation, we cannot generate a document for eLibrary that contains the correct versioning information. For these documents, therefore, the Instruction Guide requires that the first page of the tariff document include the required information: Company name, tariff title (if applicable), and the appropriate version number.

50. INGAA suggests that for gas tariffs, the regulations should continue to require that the first section or sheet of the tariff include: The FERC Gas Tariff Volume Number, the name of the natural gas company, as well as the name, title, address, telephone number, e-mail address and facsimile number of a person to whom communications concerning the tariff should be sent. We will modify the regulation to continue this requirement.

51. EEI recommends that the Commission eliminate various formatting requirements required under Order No. 614.[36] As we have discussed above, we are eliminating a variety of the required formatting requirements because they are included in the XML metadata and the other formatting requirements are included in the standards. As a result, the formatting and filing requirements of Order No. 614 have been supplanted by the regulations and requirements addressed in this rulemaking.[37]

4. Marked Tariff Changes

52. The Commission's current interstate natural gas pipeline (§ 154.201) and electric utility regulations (§ 35.10), require companies

[34] 18 CFR 154.102.

[35] The x.y.z format is a representation of the version (designation) of a tariff filing where ''x'' represents revision number for the given tariff provision (tariff record), ''y'' delineates that it is a substitute for a previously filed tariff provision, and ''z'' indicates that it is a ''squeeze'' tariff provision. A ''squeeze'' tariff provision occurs when a tariff provision needs to be made effective on a date which occurs between the effective dates of two tariff provisions that already are filed with the Commission.

[36] *Designation of Electric Rate Schedule Sheets,* Order No. 614, 65 FR 18,221 (Apr. 7, 2000), FERC Stats. & Regs. ¶ 31,096 (2000).

[37] The provisions of § 35.5 regarding rejection of material (adopted in Order No. 614) are being retained. In filing pre-existing contracts and rate schedules, electric utilities are still required to eliminate the use of supplements and include in their filings only effective provisions. *See* 18 CFR 35.1 (revised to remove the use of supplements); *Boston Edison Company,* 98 FERC ¶ 61,292 (2002) (utilities must file effective tariff provisions); *Vermont Yankee Nuclear Power Corporation,* 98 FERC ¶ 61,122, at 61,366 (2002) (utility required to remove tariff language that was no longer effective from its rate schedule).

to provide a marked version of the tariff text in the tariff filing indicating the changes and deletions made to the existing tariff text. The oil pipeline regulations (§ 341.3) provide for the use of special symbols to denote changes.

53. We are continuing the requirement for filing marked versions of tariffs. We also are modifying the symbols used by the oil pipelines using the symbols proposed by AOPL so that the symbols can be entered into a find or search message box using keystrokes available on a keyboard. In contrast to past practice in which tariff changes were filed only as individual sheets or supplements, the standards permit tariff documents to be filed as large sections or as entire documents. Although we are confident that filing companies will not intentionally make unmarked changes to tariff text, we want to ensure that both staff and the public are not put in the position of having to read the entire tariff text of large sections or an entire document to ensure that unmarked changes were not made. As a precaution, therefore, we are revising our regulations to make clear that only the sections of the tariff document appropriately identified in the filing will be considered part of the filing and any acceptance of a filing by the Commission will not constitute acceptance of an unmarked tariff change.

54. INGAA supports the regulation, but requests that the Commission modify it to state that ''interested parties may comment only on those revisions appropriately designated and marked to constitute the filing; provided, however, comments on unmarked and undesignated language will be permitted when such comments provide useful information to the Commission for the resolution of issues directly related to the filing.'' We will not adopt the proposed language as part of the regulation because, as INGAA itself recognizes, determinations as to the appropriateness of such comments need to be made on a case by case basis. The Commission must in individual cases determine if the protest or comment on the unchanged tariff text bears upon the justness and reasonableness of the proposed tariff change or is a request for the Commission to take action under section 5 of the Natural Gas Act to revise the unchanged provision.

55. AOPL argues that the Commission should remove the proposed language in § 341.3 of the regulations arguing that a filed tariff change should be deemed effective even if a symbol is misplaced or incorrect. AOPL states that under long-standing ICA precedent the omission of a symbol in a tariff denoting a change in rate does not affect the validity or applicability of the tariff item.

56. We never meant for this provision of the regulations to constitute a trap that would penalize an oil pipeline if it simply used the wrong symbol or failed to include a symbol in the tariff as long as its overall filing was sufficient to provide notice of the proposed change. We therefore have revised the regulation from that proposed in the NOPR to make clear the regulation does not apply to an improper or omitted symbol so long as the change is identified in the tariff filing.[38] The purpose of this regulation is to ensure that shippers and the Commission receive the required notice of proposed changes by the pipeline and that shippers are not penalized by the failure of the pipeline to provide the requisite notice. As part of the NAESB process, agreement was reached on allowing oil pipelines to file entire tariffs as PDF files. Because of the nature of PDF files, however, it will be difficult for the Commission staff or the pipeline's customers to create a document comparison of a PDF document. Thus, the oil pipeline would be in the best position to create a document comparison, and we find the burden of ensuring proper notice legitimately should fall on the oil pipeline making the filing. The oil pipeline could for example satisfy this requirement by indicating its changes in the transmittal letter or attaching to the transmittal letter a redline-strikeout version of the tariff being revised.

57. Section 6(3) of the Interstate Commerce Act (ICA) recognizes that it is the responsibility of an oil pipeline in making a filing to change its tariff to ''plainly state the changes proposed to be made in the schedule then in force.'' *ICC* v. *American Trucking Association,*[39] cited by AOPL, does not establish the invalidity of the Commission's regulation. In *American Trucking*, the Interstate Commerce Commission (ICC) sought to reject tariff rates based on violations of rate bureau agreements. While the Court found that the ICC was without statutory authority retroactively to reject a tariff in violation of the rate bureau agreement after the tariff has taken effect, the Court found that the ICC did have authority to condition tariff approval in a manner reasonably tied to statutory objectives. In this regulation, we are not retroactively rejecting a tariff we have previously accepted; rather we are imposing a regulatory condition governing the filing prior to acceptance that will ensure that customers are protected in the event that the oil pipeline fails to provide sufficient notice of a tariff change. Moreover, the regulation does not determine the regulatory outcome of any challenge to the unidentified rate. We recognize the regulatory differences between the ICA and the FPA and NGA,[40] and that interpretations of the ICA have provided that, in some circumstances, the failure to identify a rate change could be deemed a technical defect that would not necessarily void an unidentified rate, but could subject the pipeline to damages or other remedies as provided in the ICA.[41]

5. Clean Tariff Sheets Filed as Attachments

58. As discussed above, the tariff text for use by the database will be filed as a separate data element, and the Commission may not be able to generate a formatted version of that tariff text acceptable to the filer for inclusion in eLibrary. For this reason, the standards provide that companies will also include as an attachment to their filing a clean copy of the relevant tariff sheets, sections, or entire document formatted as the filer prefers.[42] The clean version of the tariff text may be filed using any electronic file format currently approved by the Secretary of the Commission for eFiling.

59. AOPL requests clarification as to which of the tariff documents included in the XML package, including the marked version made by the utility,

[38] The NOPR used the phrase ''revisions that are marked appropriately,'' which in the context of the oil pipeline regulations might be read to connote marked with the correct symbol. We are revising the regulation to read ''revisions to tariffs identified in the filing'' which will cover revisions that are explained in the transmittal letter even if the symbol is incorrect or omitted in the tariff.

[39] 467 U.S. 354 (1984) (*American Trucking*).

[40] The ICA for example provides a two-year period for reparations, which is not part of the NGA or FPA. 49 App. U.S.C. 16(3)(b) (1988).

[41] *See Genstar* v. *ICC,* 665 F.2d 1304, 1308 (D.C. Cir. 1981) (for rates with procedural irregularities, the remedy is correction of the ''harm if any caused by unlawfulness or irregularity''). For example, a shipper that does not have effective notice, may not be able to protest the filed rate and may only be aware of, and challenge, a rate after it has received a bill. After such a challenge is filed, the Commission could review the rate to determine if it is just and reasonable. If the Commission were to determine that the filed rate is not just and reasonable, but that a different rate is justified, the damages could be computed based on the difference between what the pipeline charged and the just and reasonable rate ultimately determined by the Commission.

[42] The text of the tariff provisions (including the entire tariff document if that option is chosen) to be included in the database must, of course, match exactly the text of the clean copy of the tariff provisions filed as an attachment. The standards also will require the company to include a non-formatted plain text copy of the tariff provisions for search purposes.

constitutes the official version of the tariff filing. As stated above, no substantive differences should exist between the tariff provisions filed as part of the XML data and the tariff provisions filed as attachments. To the extent that such differences exist, and they are significant, they will need to be addressed on a case-by-case basis by the Commission.

6. Joint, Shared, and Section 206 Filings

60. All utilities, but principally the electric industry, may make joint and shared tariff filings. Joint filings refer to tariffs applicable to more than one company. Shared tariffs refer to a tariff that can be revised by one or more parties. Shared tariffs principally refer to ISO or RTO tariffs, sections of which can be revised by the ISO and RTO as well as by individual transmission owners. Section 206 tariff filings again relate principally to ISOs and RTOs, which may not have the ability to make tariff filings under section 205 of the FPA, but have the right under their operating agreements to make tariff filings under section 206 of the FPA. The following approaches should ensure that parties with filing rights can make appropriate filings without undue burden.

a. Joint Tariff Filings

61. Section 35.1(a) of the Commission's regulations establishes two methods by which public utilities that are parties to the same rate schedule may file the rate schedule with the Commission: (1) Each public utility can file the rate schedule itself, or (2) ''the rate schedule may be filed by one such public utility and all other parties having an obligation to file may post and file a certificate of concurrence.'' [43] Prior to Order No. 614, when filers made a single filing, Commission staff would copy the rate schedule or tariff for the number of joint filers, place the appropriate designations on the documents, and put them in the tariff books. In Order No. 614, the Commission stated in the preamble that ''on joint services, each utility offering a service must file its own tariff sheets.'' [44] Currently, we therefore receive a single filing usually from a designated filer with identical tariff sheets for each joint filing utility, except that each utility's tariff contains the appropriate sheet designation for that utility.

62. In the Commission's current state of software development, we are not in a position to permit a single designated filer to submit tariff provisions on behalf of multiple entities as part of a single filing. We, however, recognize the inefficiency and confusion for the filer, the staff, and the public in having multiple identical filings made on behalf of different companies. To deal with this issue, the following approach will minimize the burden on the filer and also provide ready access to the tariff.

63. We will no longer require utilities to follow the Order No. 614 preamble instructions to file multiple copies of a tariff. Instead, the joint filers will be permitted to designate one filer to submit a single tariff filing for inclusion in its database that reflects the joint tariff, along with the requisite certificates of concurrence. The non-designated joint filers would include in their tariff database a tariff section consisting of a single page or section that would provide the appropriate name of the tariff and the identity of the utility designated as the filer for the joint tariff. In this way, the staff or the public will be able to find quickly the appropriate tariff in the database, without the need for multiple filings by each of the filers.

64. EEI maintains that parties with joint tariffs should have flexibility to make modifications to these tariffs, but it does not object to the procedure outlined above. We, therefore, will adopt this approach to joint tariffs.

b. Shared Tariffs

65. Shared tariffs refer principally to ISO and RTO tariffs, portions of which may be revised by FPA section 205 filings by the ISO/RTO or other transmission owners. Depending on the tariff section involved, one party may have exclusive rights to modify the section or multiple parties may have rights to modify the section. The structure of all the ISO and RTO tariffs as well as their filings rights are different.

66. In order to file revisions to shared tariffs today, parties with shared filing rights have to share information about the tariff, such as the current section numbering and sheet designations as well as the text of the provisions. Some ISOs and RTOs provide in their tariffs that the ISO/RTO is responsible for administering the tariff.[45]

67. The use of electronic filing will provide parties with shared tariffs with greater opportunities to develop electronic filing methods that fit their respective tariff structure, filing rights, and business processes. First, parties in organized markets can develop or obtain filing software to be shared among those with filing rights that imposes restrictions on filing rights as applicable under the individual ISO or RTO tariff. Second, ISOs and RTOs can agree to make all filings on behalf of the members in order to maintain administrative control over the tariff. Third, each of the respective parties with filing rights can continue to make individual filings as they do today by sharing certain relevant tariff and metadata among the parties with shared rights.

68. With respect to the third option, individual filings by each company, we have developed a method for making such filings. The party initiating the filing (Company A) would need to have an eRegistered party (Filer) log-on to make the filing. The Filer would have to know Company A's company identification number and password. In order to make such a filing, the ISO and RTO would have to share with Company A its company identification number (but not its password) and tariff identifier used in the XML schema for the ISO or RTO's tariff along with other required metadata for making the filing.

69. Currently, for some ISOs and RTOs, when a transmission owner makes a section 205 filing to revise an ISO or RTO tariff, the ISO or RTO is notified only through service. In order to provide greater security and more immediate notification to the ISO or RTO, we will provide an e-mail notification to the ISO or RTO when the XML filing passes verification checks. This notification will ensure that the ISO or RTO can detect immediately any potential unauthorized filing. Moreover, because the person making the filing will be eRegistered and will be using the company identification number of the filer (Company A), we will be able to easily identify who made the filing in case any questions are raised.

70. New England PTOs support the Commission's approach to shared document filings, but request that the Commission provide additional time for possible needed revisions to the OATT of ISO New England. As discussed later, the Commission will be providing sufficient time to develop software and implement the electronic filing requirements. Such time should be sufficient to make whatever tariff or other changes may be needed to accommodate shared document filings. If ISO New England can show that

[43] 18 CFR 35.1(a).

[44] Order No. 614, FERC Stats. & Regs. ¶ 31,096 at 31,503.

[45] Midwest ISO Transmission Tariff, Appendix K, § F. *http://mktweb.midwestiso.org/publish/Document/469a41_10a26fa6c1e_-6d790a48324a/TOA%20(As%20Accepted%20on%2012–03–07%20EC07–89).pdf?action=download&_property=Attachment.*

additional time is required, it may file for an extension of time.

71. While generally supporting the Commission's approach, ISO New England suggests that the Commission should provide additional security for shared tariff filers by developing and administering a database that would permit a tariff owner to control the parties authorized to file tariff changes to its tariff.[46] We have closely examined the potential security risks to the eTariff system and find that at this point the benefits of ISO New England's proposal for increased security do not justify the enhanced costs for the Commission to build and support an administrative Web site and database necessary to implement ISO New England's proposal.

72. The eTariff system will be more secure than the current paper filing system and the current eFiling system, and we have not experienced unauthorized filings to date through either our paper or eFiling system. In the current eFiling system, a filer need only be eRegistered.[47] The eTariff system, however, will provide additional security because in addition to eRegistration, the filer must possess both a company registration number and a password. These forms of identification will be limited to regulated utilities. The RTO's or ISO's password will be unique to each company and need not be shared with another utility having shared filing rights, thereby providing enhanced security. Further, any filing made using the RTO's or ISO's company registration number will generate an e-mail to the RTO or ISO, so that it can monitor actively any potential unauthorized filings.

73. After comparing the potential benefits of ISO New England's approach against the costs of implementation, we have decided not to try to implement the authorized filer proposal. If we find after implementation that additional security is necessary, we will reconsider this option at that time.[48]

c. Section 206 Filings Related to ISOs/RTOs

74. ISOs and RTOs sometimes have tariff or operating agreement provisions that require a certain percentage of stakeholder support for making FPA section 205 filings. As a result, if the requisite stakeholder approval is not obtained, ISOs and RTOs have retained rights to make filings pursuant to section 206 of the FPA, and may make a single filing under both section 205 and section 206.[49] In addition, transmission owners that are part of the RTO also may file complaints under FPA section 206 contending that the ISO or RTO tariff is unjust and unreasonable.

75. For ISO or RTO transmission owners filing a complaint against the ISO or RTO, the complaint must be filed pursuant to the standard complaint mechanism. While these transmission owners may have legal rights to make section 205 filings to change certain aspects of the ISO or RTO tariff, they do not have any different rights than any other party to file complaints under section 206. If the Commission agrees with the complainant, the ISO or RTO would then be directed to submit a compliance filing through the eTariff portal to make the required tariff changes.

76. However, the RTO or ISO making a filing to revise its own tariff pursuant to section 206 should make such a filing through the eTariff portal with the appropriate tariff revisions using the NAESB standards. Because such a filing relates to the ISO's or RTO's own tariff, and the ISO or RTO has a reserved right to make such a section 206 filing, such a filing is more similar to a standard tariff filing by a utility as opposed to a complaint filing. In addition, since RTOs or ISOs may make a single filing in one proceeding under both sections 205 and 206, it seems appropriate to have such a filing made using the standard eTariff mechanism.[50]

C. Other Business Practice Changes

1. Electronic Service

77. In the NOPR, the Commission proposed to permit electronic service for initial filings.[51] We are revising our regulations to permit electronic service according to the same procedures and protocols used for other forms of service under the Commission's regulations.[52] Customers and state agencies wishing to receive service will be required to provide the company with an applicable e-mail address (since a service list will not exist at the time of an initial filing). Any customer believing it is unable to receive electronic service will need to request a waiver of electronic service as provided in the regulations.[53]

78. EEI asks for further clarification of how electronic service should be made, including questions about the provision of e-mail addresses, suggestions related to the use of generic service e-mail addresses and the ability to serve after a filing has been posted. In this rulemaking, we have expanded the scope of electronic service to include initial filings. We have expressly provided in the regulations that customers must provide an e-mail address for initial service to the utility unless they obtain a waiver of electronic service under Part 390 of our regulations. Other than establishing a procedure for obtaining customer e-mail address, all other aspects of electronic service for initial filings will be the same as those for service in a proceeding with a service list, including the e-mail addresses to be used for service, and the use of a link to the filing in eLibrary as the means of providing service.[54]

2. Attachment Documents

79. Under the standards, all attachments to a filing, such as the transmittal letter, testimony, and cost-of-service statements, will be included as part of the XML package. The attachments must meet the formatting requirements for any other eFiled document, as set forth by the Secretary of the Commission. AOPL suggests deleting the requirement to file a proposed form of protective agreement in the existing (and proposed) § 348.2. AOPL does not explain its suggestion, and we do not find that the adoption of electronic filing requirements for tariffs necessitates removal of the requirement to file proposed forms of protective agreements. Under the NAESB standards, proposed forms of protective agreements must be filed as attachment documents.

3. Withdrawal of Pending Tariff Filings and Amendments to Tariff Filings

80. As discussed in the 2004 NOPR, the electric, gas, and oil industries have

[46] For example, the Web site would permit ISO New England to select those transmission owners with the authority to make filings to amend the ISO New England's OATT.

[47] Paper filings are delivered by courier or mail with no way for the Commission to verify that the filing is authorized by the purported filer.

[48] First Energy raises a question about filings by outside counsel, and similarly suggests a system of having administrators provide passwords with respect to filings by outside counsel. As discussed above, outside counsel will be able to submit filings as long as they adhere to the standards, and the company provides them with the appropriate filing identifiers, passwords, and other information. Just as companies have to protect their internal use of passwords, they will need to protect against the use of passwords by outside counsel or others making filings on their behalf. Companies of course can design their own software to provide administrative password rights, but for the reasons discussed above, we do not find it necessary for the Commission to provide such administrative control.

[49] *See, e.g., PJM Interconnection, LLC,* 115 FERC ¶ 61,079 (2006).

[50] No comments were filed on this approach.

[51] *Notice of Additional Proposals and Procedures,* FERC Stats. & Regs. ¶ 35,551 at P 7.

[52] 18 CFR 385.2010.

[53] 18 CFR 390.3.

[54] *See* 18 CFR 385.2010(f)(3).

different procedures for withdrawing and amending a tariff filing. For example, the regulations governing oil pipelines permit withdrawal of proposed tariff filings before the tariff filing is effective,[55] while the regulations for electric and gas companies do not address withdrawal of tariff filings prior to suspension.[56] Because tariff withdrawal and amendment filings affect the status of tariff proposals, standardization of these procedures is needed in order to effectuate an electronic tariff system. We are therefore revising our regulations to permit a company to withdraw in its entirety a tariff filing, which has not become effective, and upon which no Commission or delegated order has been issued, by filing a withdrawal motion with the Commission. The withdrawal will become effective, and the filing deemed withdrawn, at the end of 15 days, so long as no answer in opposition to the withdrawal motion is filed within that period and the Commission has not acted to deny the withdrawal motion. If such an answer in opposition is made, the withdrawal is not effective until a Commission or delegated order accepting the withdrawal is issued. In order to ensure that the tariff database remains accurate, such withdrawal filings will need to be made through the eTariff portal using the XML filing requirement so that the appropriate data elements can be revised.

81. Electric utilities and interstate pipelines file amendments or modifications to tariff provisions to make substantive changes to their filings as well as to correct minor errors. Because such modifications can have substantive effect, we are revising § 35.17 and § 154.205 to make clear that the filing of an amendment or modification to a tariff provision will toll the period for action on the prior filing and establish a new period for action.

82. In the 2004 NOPR, we recognized that in the past, we have sought to process minor changes filed in NGA cases within the 30-day statutory period, and we will continue to try to do so for those amendments that are not significant or do not create a major substantive difference in the tariff proposal. INGAA filed a comment asking to include the following in the regulatory text: ''For tariff filings containing minor changes in the tariff proposal, the Commission will seek to process minor changes filed in NGA cases, within the 30-day statutory notice period for the original filing.'' While we intend to try to abide by our past practice, we find this language inappropriate for inclusion in our regulations, because it only reflects a goal or aim, and is not sufficiently precise to be included as a regulation.

4. Motions

83. Several types of motions may be made by regulated entities that do not include tariff sheets, but that affect the status of a tariff filing. For example, interstate natural gas pipelines may file motions to move suspended tariff sheets into effect, and other regulated companies may file motions to change the effective dates of tariff filings or to withdraw tariff filings. Because such filings affect the metadata associated with the tariff filing, such motions must be filed through the eTariff portal using the XML filing package.

5. Rate Sheets for Tariff Filings by Intrastate and Hinshaw Pipelines

84. Under the Commission's current regulations in section 284, subparts C and G, an intrastate or Hinshaw pipeline must provide the Commission with an election of how it will determine its interstate service rates. An intrastate or Hinshaw pipeline also is required to file with the Commission, within 30 days of the commencement of service, a statement of operating conditions, which includes the rate election it has made, but which currently does not require a statement of the interstate rates to be charged. The interstate rates are included only as part of the overall filing.

85. In implementing the proposal for electronic tariff filing, the statement of operating conditions will be placed in the tariff database. To facilitate easier access by the Commission and the public to the interstate service rates of intrastate and Hinshaw pipelines, we are revising § 284.123 of the regulations to require intrastate and Hinshaw pipelines to include a statement of their interstate service rates as part of the statement of operating conditions that will appear in the tariff database. Including a statement of interstate service rates in the statement of operating conditions will ensure that all relevant information related to interstate service will be accessible in the tariff database.

D. Regulatory Text

86. Many commenters submitted detailed proposals to revise regulatory text in a number of areas. We very much appreciate the interest that has been paid to trying to ensure that the regulatory text is as accurate as possible. We have carefully reviewed those suggestions, included the ones we find appropriate, and discussed above the substantive revisions we determined not to make. The suggestions we did not adopt were stylistic, linguistic, or syntactical revisions that, in some cases, did not conform to the requirements of the **Federal Register**, or that we did not find superior to the regulatory text we are adopting. We will not discuss each of these proposed revisions individually.

E. Transition Procedures

1. Testing of Software

87. We recognize that after the Final Rule, companies and third-party vendors developing tariff filing software will need time for development as well as a mechanism for testing their software to make sure that their filings will be accepted by the Commission. We will therefore provide a testing site where companies can make test electronic filings to determine whether their XML packages can be received and can be parsed in order to determine if the XML package can be opened and broken into its constituent parts, and to verify whether the metadata supplied meets the requirements of the XML schema.

88. Further, as the development process continues, we think it will be useful to continue the dialog among FERC staff and the industries involved to help the industries better understand the use of the code values as well as to discuss issues that may arise regarding methods of implementing the standards. Commission staff will therefore hold technical conferences as needed during this process.

89. UNICON argues that the Commission's testing site should be permanent in the event the standards are revised. It also argues that the testing site should fully simulate FERC's live eTariff environment. It maintains that regulated companies could use this testing site to verify that the XML packages being submitted are valid and can be parsed by FERC's software and validate that the filing contents within the XML packages will be processed appropriately.

90. We are committed to providing as robust an electronic testing site as we are able, within resource and budgetary constraints. When, and if, the standards are revised we recognize that we may need to provide some additional testing, and depending on budgetary constraints we will try to maintain the electronic testing platform even after the implementation date as companies may need to experiment with different types of filings. Because much of the

[55] 18 CFR 341.13.

[56] 18 CFR 35.17; 154.205.

processing of tariff filings received by the Commission will not be automatic, but dependant on the human interaction with software on our end, we cannot commit to providing companies with a complete review of all test filings, including how these will be displayed on our web viewer. Our staff is, and has been, committed to making this program a success. As discussed above, staff will conduct, perhaps with NAESB, conferences on implementation issues and staff will continue to provide as much information on particular eTariff filing issues as their time permits.

91. EEI requests that the Commission post on its Web site all the required information necessary to implement the eTariff approach and place all information, including code values, into a single document. As discussed earlier, we will provide on our web site all the information needed to implement eTariff in as user friendly a means as possible. Because the industries during the NAESB process requested it, we have posted code values separately so that companies can download that information more efficiently. These technical issues can be discussed at the technical conferences, and we will continue to try to post information in the manner that will be most useful to industry.

2. Baseline Tariff Filings

92. Each regulated entity will be required to make a filing to establish its baseline tariffs. In the NOPR, we proposed to reduce the burden in making the baseline filing and limit such filings to tariffs of general applicability. As applied to filings by electric utilities, the baseline filing will include open access transmission tariffs (OATTs), power sales tariffs available to any customer, and market-based rate tariffs. Individually negotiated rate schedules and agreements will not have to be included as part of the baseline filing. Interstate natural gas pipelines will have to file their existing Volume No. 1 tariffs, but will not have to file special rate schedules included in Volume No. 2 tariffs, or any existing negotiated rate or non-conforming service agreements. Intrastate and Hinshaw pipelines will have to file their statement of operating conditions including their interstate service rates. Oil pipelines will need to file their tariff publications. Other pre-existing effective tariffs, rate schedules, and agreements do not need to be included in the baseline filing, although companies are free to include these agreements in their baseline filings, and we would encourage them to do so.

93. After implementation, all new tariffs and rates schedules would have to be filed using the NAESB standards. Existing tariffs and rate schedules not included as part of the baseline filing are required to be filed electronically only when they are revised or amended.

94. We recognize that some of the pre-existing tariffs and rates schedules, such as older rate schedules and contracts, may not exist in electronic form. Companies having or electing to file such agreements do not need to retype the entire agreement. They may scan these agreements into PDF or another image format and file them in that fashion as an entire document.[57] Although not required, companies are encouraged to run an optical character recognition program (OCR) to convert these scanned documents into a textual format so that the text of the tariff can be searched and copied.[58]

95. The baseline tariff filing is not a substantive tariff revision. The baseline filing, therefore, should reflect the existing accepted tariff provisions, with no proposed substantive changes or revisions. The baseline tariff filings will be subject to notice and comment solely to permit customers to ensure that the proposed baseline tariff is an accurate reflection of the effective tariff. No protests involving other issues, such as the merits of various sections of the tariff, will be considered. We also are providing a one-time delegation of authority to the Director of OEMR to rule on protests.

96. If a regulated entity has a pending or suspended tariff change filing at the time of the filing of the baseline tariff, the regulated entity should not file these pending or suspended tariff sections as part of the baseline tariff filing. When the Commission acts on pending or suspended tariffs provisions, the companies will file the tariff provisions as a compliance filing through the eTariff portal for inclusion in the database.

97. As discussed above, in filing joint tariffs, utilities have the option of designating one utility as the designated filer, as opposed to each utility filing the identical tariff. For companies adopting the designated filer option, the designated filer will file the baseline tariff; the non-designated utility will need to include in its baseline filing a tariff section that provides the appropriate name of the tariff and identifies the utility that is the designated filer for the joint tariff.

98. EEI requests clarification whether a baseline filing or tariff filings by electric utilities would be limited to OATTs. First Energy requests that prior versions of the baseline tariffs will not need to be filed. As stated above, electric utilities need to include as part of their baseline tariff filings the following three types of documents: OATTs, power sales tariffs available to any customer, and market-based rate tariffs. Only the currently accepted versions of the baseline tariffs need to be filed; historic copies should not be filed.

99. EEI, Duke, and the CAISO request that companies be allowed to include pending compliance filings (which have not yet been accepted) in their baseline filings. They maintain that the tariff text in compliance filings reflects Commission directives that the utilities are implementing and that if compliance filings are not included in the baseline filings, the baseline tariff as displayed by the Commission could be inaccurate.

100. Because eTariff is a database system with no existing records, the baseline tariff needs to reflect the tariff as accepted by the Commission. Any subsequent tariff changes, including previously filed compliance filings, need to be filed separately so that the system can appropriately record the status of such filings. To reduce the burden on parties making baseline filings, we are limiting the baseline filing obligation only to the accepted tariff provisions. Pending tariff provisions in compliance filings will be added seriatim to the database as the Commission acts on a company's compliance filings. This will reduce the number of baseline filings companies are required to make.

101. However, we will permit companies wishing to place pending compliance filings into the database during the baseline filing process to do so. But we emphasize that baseline filings of compliance provisions are not required; this is only an option available to those companies wishing to avail themselves of it. The details of including compliance provisions as part of the baseline filing process can be discussed with staff during the technical conferences.

3. Implementation Date for eTariff

102. While we think the entire industry, both filers and customers alike, will benefit from quick

[57] As in the current practice, utilities filing scanned documents can comply with the requirement to show only the effective tariff provisions by making handwritten edits or cutting and pasting provisions.

[58] We recognize that OCR may not work well on some older documents. But even if the OCR version is not sufficiently legible to be filed as the tariff text, a filer could include the OCR version in the plain text field of the XML schema, so that it can be used for search purposes.

implementation of eTariff, we recognize that we need to provide sufficient time for software development and testing to ensure that the filing of tariffs electronically has as few bugs as possible. In the NOPR, we generally proposed that compliance would begin within six months to one year after the Final Rule is issued.

103. Many of the commenters thought that six months was too short and requested implementation periods of one year or longer.[59] INGAA and AOPL urge the Commission not to set a firm implementation date, but rather focus on successful implementation.

104. In order to provide companies with sufficient time to develop and test software, we will provide 18 months for implementation, until April 1, 2010, with a staggered implementation schedule for companies over the next six months. Staff and industry should work out the schedule for staggered implementation during the technical conferences.

III. Information Collection Statement

105. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, recordkeeping, and public disclosure (information collections) imposed by an agency. Pursuant to OMB regulations, the Commission is providing notice of its information collections to OMB for review under section 3507(d) of the Paperwork Reduction Act of 1995.

106. The Commission identifies the information provided under Part 35 as contained in FERC–516 ''Electric Rate Schedules and Tariff Filings; Part 154 as contained in FERC–545 Gas Pipeline Rates: Rate Change (Non-Formal); Part 284 as contained in FERC–549 Gas Pipeline Rates: NGPA Title III Transactions and Parts 341 and 344 as contained in FERC–550 ''Oil Pipeline Rates: Tariff Filings.'' The Commission solicited comments on the need for this information, whether the information will have practical utility, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of information technology. The Commission received specific comments regarding its burden estimates.

A. Comments on the NOPR's Burden Estimates

107. INGAA, EEI, TransCanada, and Southern California Edison contend that the burden estimates used by the Commission in the NOPR are understated. As part of the NAESB process, a consensus of all the industries chose the flexibility provided by using the NAESB standards, and the use of XML protocols for business communication, in place of using filing software furnished by the Commission.[60] The industries recognized that adopting such standards would entail the building or purchasing of software compatible with the XML protocols. By adopting these standards, companies opted for the enhanced flexibility to obtain software, or modify existing tariff maintenance software, in order to better integrate tariff filings with their individual tariff maintenance and business needs. The use of the NAESB standards, as opposed to the Commission distributed software, also provides an open framework for third-party software developers to develop filing and tariff maintenance applications or processes, which, by managing tariffs for multiple parties, will enable development costs to be spread over a large number of users. The industry consensus was that the flexibility offered by the standards outweighed the added costs of developing or purchasing software to implement the standards.

108. But this flexibility, and the likelihood that third-party providers will reduce the costs of constructing systems, makes computing burden estimates difficult, particularly given the difficulty in separating the costs of compliance from the other business functions provided by various software systems. INGAA contends that the costs for a tariff filing system should be in the range of $20,000 per tariff, but TransCanada argues the costs for its system suggest a $10,000 cost estimate.

109. We developed the burden estimates in the NOPR based only on the necessary costs of developing a bare-bones filing system that would enable a company to make a filing in compliance with the standards.[61] But we fully recognize that, while not strictly required by this Final Rule, companies making larger numbers of tariff filings will want to obtain a more robust software package that will provide various forms of tariff management and storage in addition to simply facilitating a tariff filing. Accordingly, we have determined to revise our burden estimates to include the greater cost of obtaining more robust software.

110. EEI maintains that companies will have multiple tariffs that need to be filed as baseline tariffs. But in this Final Rule, at EEI's request, we limited the baseline filing for electric companies to OATTs, power sales tariffs available to any customer, and market-based rate tariffs.

111. EEI maintains we have underestimated the time for legal review of certain data fields. We have included in these revised estimates additional time for legal review of the baseline tariff filings. Since the baseline filings consist only of already accepted tariff sheets, such legal review should not be significant. For ongoing tariff filings, this rulemaking does not entail additional legal review, since attorneys generally already review the substantive tariff and attachment data contained in such filings, and the metadata fields are not substantive.

112. EEI suggests that the estimates leave out one-time costs for evaluating software, and training on new systems. We recognize that we did overlook such costs, and we have added additional hours for evaluation and training of relevant personnel.

B. Burden Estimates

113. The following burden estimates reflect the cost to an individual company of obtaining software sufficient to meet the requirements of the regulation, as well as the cost of making the required baseline filing. Investment in electronic filing will reduce filing costs over time. Therefore, we include an estimate of the cost savings per year due to the savings in mail, messenger delivery, and copying. The public reporting and records retention burdens for the reporting requirements and the records retention requirement are as follows.[62]

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[59] EEI, Duke, Nevada Power (proposes two years); ISO New England and TransCanada (proposes at least one year); UNICON (proposes 18 months); FirstEnergy (proposes 18–24 months).

[60] The President's Management Agenda (PMA) encourages the development of protocols that enable digital communication using XML protocols as the language of ebusiness. E-Government Strategy, at 8 (Executive Office of the President, April 2003) (minimization of burden on business by * * * using XML or other open standards to receive transmissions), *http://www.whitehouse.gov/omb/egov/2003egov_strat.pdf*.

[61] The elements for such a system include a database program; an Internet browser; an XML form generator, a Base64 converter; and a ZIP file converter, many of which can be obtained for free or at low cost. See *http://www.download.com/Base64-De-Encoder/3000/2248_4/10571789.html?tag=lst-1* (freeware Base 64 converter); *http://www.altova.com/products/databasespy/database_tool.html* (XML form generator); *https://shopm.winzip.com/cgi-bin/wzct1.cgi* (ZIP file generator). We also included time and cost for hiring a computer programmer.

[62] These burden estimates apply only to this Final Rule and do not reflect upon all of FERC–516, FERC–545, FERC–539 or FERC–550.

BASELINE TARIFF—HOURS

Data collection	Number of respondents	Hours per tariff	Total hours	Installation hours	Total install hours	Total hours
FERC–516:						
Utilities	152	9	1368	20	3040	4408
Marketers	984	5	4920	20	9840	14760
RTOs/ISOs	6	362	2172	28	168	2340
FERC–545:						
Small Pipelines	106	7	742	20	2120	2862
Large Pipelines	62	18	1116	20	1240	2356
NGPA	200	6	1200	20	4000	5200
FERC–550 Oil	200	9	1800	20	4000	5800
Totals			13318		24408	37726

Total Annual Hours for Collections: 37,726.

BASELINE TARIFF—COSTS

Data collection	Number of respondents	Cost per tariff	Total filing cost	Software purchase & installation	Total cost purchase & installation
FERC–516:					
Utilities	152	$211	$32,072	$10,000	$1,520,000
Marketers[63]	984	109	107,256	1,035	1,018,440
RTOs/ISOs	6	8,345	50,070	10,000	60,000
FERC–545:					
Small Pipelines	106	171	18,126	2,070	219,420
Large Pipelines	62	423	26,226	10,000	620,000
NGPA	200	132	26,400	2,070	414,000
FERC–550 Oil	200	206	41,200	10,000	2,000,000
Totals			301,350		5,851,860
Combined Total					6,153,210

GOING FORWARD COST SAVINGS PER ANNUM

	Total number of filings	Cost per filing	Total cost
Oil	689	$110	$75,790
Electric	4,445	406	1,804,670
Gas	2,548	406	1,034,488
Total			2,914,948

114. OMB's regulations require it to approve certain information collection requirements imposed by an agency rule. The Commission is submitting notification of this Final Rule to OMB.

Title: FERC–516, Electric Rate Schedules and Tariff Filings; FERC–545, Gas Pipeline *Rates:* Rate Change (Non Formal); *FERC–549 Gas Pipeline Rates:* NGPA Title III Transactions; and *FERC–550 Oil Pipeline Rates:* Tariff Filings.

Action: Proposed Collections.

OMB Control Nos. 1902–0096, 1902–0154, 1902–0086 and 1902–0089.

Respondents: Business or other for profit; Federal Government.

Frequency of responses: On occasion.

115. *Necessity of the Information:* The Federal Energy Regulatory Commission is amending its regulations to require that all tariffs and tariff revisions and rate change applications for the public utility, natural gas pipeline, and oil pipeline industries be filed with the Commission in lieu of paper. Electronically filed paper tariffs and rate case filings should improve the efficiency of the administrative process for tariff and rate case filings, by providing time and resource savings for all stakeholders. Specifically, electronic filing reduces physical storage space needs and document processing time, provides for easier tracking of document filing activity; potentially reduces mailing and courier fees; allows concurrent access to the tariff filing by multiple parties as well as the ability to download and print tariff filings; and provides automatic e-mail notification to an applicant of receipt of the filing and whether or not it has been accepted. The Commission's staff will be able to retrieve and analyze information contained in these filings more readily than under the current system; mandated electronic filing of these documents should facilitate the staff's retrieval and review of a particular document. These capabilities will be extremely beneficial as many tariff filings involve statutory processing deadlines.

[63] The costs for marketers assume that affiliated marketers will share a single installation.

116. The Final Rule will assist the Commission' efforts to comply with the Paperwork Reduction Act,[64] the Government Paperwork Elimination Act (GPEA) [65] and E-Government Act of 2002 [66] by developing the capability to file electronically with the Commission via the Internet with uniform formats using software that is readily available and easy to use. Expanding Electronic Government is one of the five key elements of the President's Management Agenda (PMA). The PMA proposed 24 ''E-Government'' initiatives including Government to Business (G2B). The goals of the G2B portfolio are to reduce burdens on business, provide one-stop access to information and enable digital communication using the language of e-business (XML). G2B also directs agencies to take advantage of commercial electronic transaction protocols.

117. The standards being adopted here were developed in conjunction with NAESB, an ANSI accredited standards developer, and employs XML protocols, as suggested in G2B. The deployment of more effective technology will help to streamline the many reporting requirements as well as facilitate a more efficient means for businesses to interact with the government.

118. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, [*Attention:* Michael Miller, Office of the Executive Director, *Phone:* (202) 502–8415, *fax:* (202) 273–0873, *e-mail: michael.miller@ferc.gov*.] Please send comments concerning the collections of information and the associated burden estimate(s) to the contact listed above and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503 [*Attention:* Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–7345, fax: (202) 395–7285. Due to security concerns, comments should be sent electronically to the following e-mail address: *oira_submission@omb.eop.gov*. Please reference the docket number of this rulemaking in your submission.

IV. Environmental Analysis

119. 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.[67] The Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for this Final Rule under Section 380.4(a) of the Commission's regulations. Section 380.4(a)(15) provides for a categorical exemption for approval of actions taken under Sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates charges, classifications and services. Section 380.4(a), (25) provides a categorical exemption for review of natural gas filings. Section 38.4(26) provides an exclusion for review of oil pipeline filings. In addition, section 380.4(a) provides an exemption for rules that are clarifying corrective, or procedural and that provide for information gathering, analysis, and dissemination. Because this Final Rule only involves these matters, no environmental consideration is necessary.

V. Regulatory Flexibility Act

120. The Regulatory Flexibility Act of 1980 (RFA) [68] generally requires a description and analysis of whether the Final Rule will have a significant economic impact on a substantial number of small entities or a certification that the Final Rule will not have a significant economic impact on such entities. In the NOPR, we stated that the proposed rule would be applicable to all entities regulated by the Commission, a small number of which may be small entities. However, the Commission did not believe the rule would have a significant impact on these small businesses because the software necessary to create the XML software is commercially available from several Internet Web sites as shareware or subject to low-cost licensing options. From the Commission staff's own experience, relatively inexpensive XML software can be obtained that can adequately provide the basic tariff filing.

121. This Final Rule applies to public utilities that own, control or operate interstate transmission facilities, natural gas companies and oil pipeline companies, the majority of which are not small businesses.[69] The Commission has identified that less than 2% of these entities qualify as small entities. Moreover, by eliminating the requirement to file numerous paper copies of tariffs and documents associated with rate filings, these regulations are designed to reduce the filing burden on all companies, including small businesses. Accordingly, the Commission finds that these regulations will not impose a significant economic impact on small businesses and no regulatory flexibility analysis is required pursuant to § 605(b) of the RFA.

VI. Document Availability

122. 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 FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

123. From FERC's Home Page on the Internet, this information is available on 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.

124. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

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[64] Pub. L. 104–13, 109 Stat. 163, (Oct. 1, 1995).

[65] Title XVII, Pub. L. 105–277, 112 Stat. 2681 (Oct. 21, 1998).

[66] Pub. L. 107–347, 116 Stat. 2899 (Dec. 17, 2002).

[67] *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[68] 5 U.S.C. 601–612.

[69] *See* 5 U.S.C. 601(3), *citing* Section 3 of the Small Business Act, 15 U.S.C. 623. Section 3 of the SBA defines a ''small business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation. The Small Business Size Standards component of the North American Industry Classification System defines a small utility as a company including its affiliates that is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed 4 million megawatt hours. A small natural gas company is defined as a company that transports natural gas and whose annual receipts (total income plus cost of good sold) did not exceed $6.5 million for the previous year. A small oil pipeline company is defined a company with 1,500 or less employees for the year.

VII. Effective Date and Congressional Notification

125. These regulations are effective November 3, 2008. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements, Electricity, Incorporation by reference.

18 CFR Part 131

Electric power.

18 CFR Part 154

Natural gas, Pipelines, Reporting and recordkeeping requirements, Natural gas companies, Rate schedules and tariffs.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 281

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental Shelf, Natural gas, Reporting and recordkeeping requirements, Incorporation by reference.

18 CFR Part 300

Administrative practice and procedure, Electric power rates, Reporting and recordkeeping requirements, Electricity.

18 CFR Part 341

Maritime carriers, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 344

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 346

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 347

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 348

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act, Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Kimberly D. Bose,

Secretary.

■ In consideration of the foregoing, the Commission amends Parts 35, 131, 154, 157, 250, 281, 284, 300, 341, 344, 346, 347, 348, 375 and 385, Chapter I, Title 18, *Code of Federal Regulations,* as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Section 35.1 is amended as follows:
■ a. The section heading is revised;
■ b. In paragraph (a), the first sentence is revised;
■ c. In paragraph (a), the phrase ''or tariff'' is added after the phrase ''rate schedule'';
■ d. In paragraphs (b) and (c), remove all references to ''supplement'';
■ e. In paragraphs (b) and (c), the phrase ''or tariff'' is removed and the phrase '', tariff, or service agreement'' is added in its place;
■ f. In paragraph (c), the phrase ''Notices of Cancellation or Termination'' is removed, and the phrase ''cancellation or termination'' is added in its place;
■ g. In paragraph (d), the phrase '', tariffs or service agreements'' is added after the phrase ''rate schedules'';
■ h. In paragraph (g), the phrase ''service'' is added before the phrase ''agreement''. The revisions read as follows:

§ 35.1 Application; obligation to file rate schedules, tariffs and certain service agreements.

(a) Every public utility shall file with the Commission and post, in conformity with the requirements of this part, full and complete rate schedules and tariffs and those service agreements not meeting the requirements of § 35.1(g), clearly and specifically setting forth all rates and charges for any transmission or sale of electric energy subject to the jurisdiction of this Commission, the classifications, practices, rules and regulations affecting such rates, charges, classifications, services, rules, regulations or practices, as required by section 205(c) of the Federal Power Act (49 Stat. 851; 16 U.S.C. 824d(c)). * * *

* * * * *

■ 3. Section 35.2 is amended as follows:
■ a. Paragraph (b) is revised;
■ b. Paragraphs (c), (d), and (e) are redesignated as paragraphs (d), (e), and (f) respectively;
■ c. In redesignated paragraphs (d) and (f), the phrase ''rate schedule'' is removed and the phrase ''rate schedule, tariff or service agreement'' is added in its place;
■ d. Paragraph (c) is added; and
■ e. Newly redesignated paragraph (e) is revised.

The revisions read as follows:

§ 35.2 Definitions.

* * * * *

(b) *Rate schedule.* The term *rate schedule* as used herein shall mean a statement of (1) electric service as defined in paragraph (a) of this section, (2) rates and charges for or in connection with that service, and (3) all classifications, practices, rules, or regulations which in any manner affect or relate to the aforementioned service, rates, and charges. This statement shall be in writing and may take the physical form of a contract, purchase or sale or other agreement, lease of facilities, or other writing. Any oral agreement or understanding forming a part of such statement shall be reduced to writing and made a part thereof. A rate schedule is designated with a Rate Schedule number.

(c)(1) *Tariff.* The term *tariff* as used herein shall mean a statement of (1) electric service as defined in paragraph (a) of this section offered on a generally applicable basis, (2) rates and charges for or in connection with that service, and (3) all classifications, practices, rules, or regulations which in any manner affect or relate to the aforementioned service, rates, and charges. This statement shall be in writing. Any oral agreement or understanding forming a part of such statement shall be reduced to writing and made a part thereof. A tariff is designated with a Tariff Volume number.

(2) *Service agreement.* The term *service agreement* as used herein shall mean an agreement that authorizes a customer to take electric service under the terms of a tariff. A service agreement

shall be in writing. Any oral agreement or understanding forming a part of such statement shall be reduced to writing and made a part thereof. A service agreement is designated with a Service Agreement number.

* * * * *

(e) *Posting* (1) The term posting as used in this part shall mean:

(i) Keeping a copy of every rate schedule, service agreement, or tariff of a public utility as currently on file, or as tendered for filing, with the Commission open and available during regular business hours for public inspection in a convenient form and place at the public utility's principal and district or division offices in the territory served, and/or accessible in electronic format, and

(ii) Serving each purchaser under a rate schedule, service agreement, or tariff either electronically or by mail in accordance with the service regulations in Part 385 of this chapter with a copy of the rate schedule, service agreement, or tariff. Posting shall include, in the event of the filing of increased rates or charges, serving either electronically or by mail in accordance with the service regulations in Part 385 of this chapter each purchaser under a rate schedule, service agreement or tariff proposed to be changed and to each State Commission within whose jurisdiction such purchaser or purchasers distribute and sell electric energy at retail, a copy of the rate schedule, service agreement or tariff showing such increased rates or charges, comparative billing data as required under this part, and, if requested by a purchaser or State Commission, a copy of the supporting data required to be submitted to this Commission under this part. Upon direction of the Secretary, the public utility shall serve copies of rate schedules, service agreements, or tariffs, and supplementary data, upon designated parties other than those specified herein.

(2) Unless it seeks a waiver of electronic service, each customer, State Commission, or other party entitled to service under this paragraph (e) must notify the public utility of the e-mail address to which service should be directed. A customer, State Commission, or other party may seek a waiver of electronic service by filing a waiver request under Part 390 of this chapter providing good cause for its inability to accept electronic service.

* * * * *

■ 4. Section 35.3 is amended as follows:

■ a. Paragraph (a) is revised;

■ b. In paragraph (b), first sentence, the phrase '', tariffs or service agreements'' is added after the phrase ''Rate schedules'';

■ c. In paragraph (b), second sentence, the phrase ''or service agreement'' is added after the phrase ''rate schedule''.

The revision reads as follows:

§ 35.3 Notice requirements.

(a)(1) *Rate schedules or tariffs.* All rate schedules or tariffs or any part thereof shall be tendered for filing with the Commission and posted not less than sixty days nor more than one hundred-twenty days prior to the date on which the electric service is to commence and become effective under an initial rate schedule or tariff or the date on which the filing party proposes to make any change in electric service and/or rate, charge, classification, practice, rule, regulation, or contract effective as a change in rate schedule or tariff, except as provided in paragraph (b) of this section, or unless a different period of time is permitted by the Commission. Nothing herein shall be construed as in any way precluding a public utility from entering into agreements which, under this section, may not be filed at the time of execution thereof by reason of the aforementioned sixty to one hundred-twenty day prior filing requirements. The proposed effective date of any rate schedule or tariff filing having a filing date in accordance with § 35.2(d) may be deferred by the public utility making a filing requesting deferral prior to the rate schedule or tariff's acceptance by the Commission.

(2) *Service agreements.* Service agreements that are required to be filed and posted authorizing a customer to take electric service under the terms of a tariff, or any part thereof, shall be tendered for filing with the Commission and posted not more than 30 days after electric service has commenced or such other date as may be specified by the Commission.

* * * * *

§ 35.4 [Amended]

■ 5. In § 35.4, the phrase '', tariff or service agreement'' is added following the phrase ''rate schedule''.

§ 35.6 [Amended]

■ 6. In § 35.6, the phrase '', tariff or service agreement'' is added following the phrase ''rate schedule''.

■ 7. Section 35.7 is revised to read as follows:

§ 35.7 Electronic filing requirements.

(a) *General rule.* All filings made in proceedings initiated under this part must be made electronically, including tariffs, rate schedules and service agreements, or parts thereof, and material that relates to or bears upon such documents, such as cancellations, amendments, withdrawals, termination, or adoption of tariffs.

(b) *Requirement for signature.* All filings must be signed in compliance with the following:

(1) The signature on a filing constitutes a certification that: the contents are true and correct to the best knowledge and belief of the signer; and that the signer possesses full power and authority to sign the filing.

(2) A filing must be signed by one of the following:

(i) The person on behalf of whom the filing is made;

(ii) An officer, agent, or employee of the company, governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(iii) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(3) All signatures on the filing or any document included in the filing must comply, where applicable, with the requirements in Part 385 of this chapter with respect to sworn declarations or statements and electronic signatures.

(c) *Format requirements for electronic filing.* The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available on the Internet at *http://www.ferc.gov* and can be obtained at the Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Washington, DC 20426.

■ 8. In § 35.8, the section heading is revised as set forth below, paragraph (b) is removed, the designation ''(a)'' is removed from paragraph (a), and the paragraph (a) heading, ''*Protests or interventions*'' is removed.

§ 35.8 Protests and interventions by interested parties.

* * * * *

■ 9. Section 35.9 is revised to read as follows:

§ 35.9 Requirements for filing rate schedules, tariffs or service agreements.

(a) Rate schedules, tariffs, and service agreements may be filed either by dividing the rate schedule, tariff, or service agreements into individual sheets or sections, or as an entire document except as provided in paragraphs (b) and (c) of this section.

(b) Open Access Transmission Tariffs (OATT) filed by utilities that are not Independent System Operators or Regional Transmission Organizations must be filed either as individual sheets

or sections. If filed as sections, the sections must be no larger than the 1.0 level, although each schedule or attachment may be a single section. Individual service agreements that are entered into pursuant to the OATT may be filed as entire documents.

(c) OATT and other open access documents filed by Independent System Operators or Regional Transmission Organizations must be filed either as individual sheets or sections. If filed as sections, the sections must be no larger than the 1.1 level, including schedules or attachments. Individual service agreements that are part entered into pursuant to the OATT may be filed as entire documents.

■ 10. Section 35.10 is amended as follows:

■ a. The section heading is revised;

■ b. In paragraph (a), the phrase '', tariff or service agreement'' is added after the phrase ''rate schedule'' anywhere it appears in the paragraph; and

■ c. Paragraphs (b) and (c) are revised.

The revisions read as follows:

§ 35.10 Form and style of rate schedules, tariffs and service agreements.

* * * * *

(b) At the time a public utility files with the Commission and posts under this part to supersede or change the provisions of a rate schedule, tariff, or service agreement previously filed with the Commission under this part, in addition to the other requirements of this part, it must list in the transmittal letter the sheets or sections revised, and file a marked version of the rate schedule, tariff or service agreement sheets or sections showing additions and deletions. New language must be marked by either highlighting, background shading, bold text, or underlined text. Deleted language must be marked by strike-through.

(c) In any filing to supersede or change the provisions of a rate schedule, tariff, or service agreement previously filed with the Commission under this part, only those revisions appropriately designated and marked under paragraph (b) of this section constitute the filing. Revisions to unmarked portions of the rate schedule, tariff or service agreement are not considered part of the filing nor will any acceptance of the filing by the Commission constitute acceptance of such unmarked changes.

§ 35.10a [Amended]

■ 11. In § 35.10a(b), the phrase ''in the same format'' is removed and the phrase ''filed electronically as'' is added in its place, and the phrase ''§ 35.10(b)'' is removed, and the phrase ''§ 35.7'' is added in its place.

§ 35.11 [Amended]

■ 12. In § 35.11, the phrase '', tariff or service agreement'' is added after the phrase ''rate schedule''.

■ 13. Section 35.12 is amended as follows:

■ a. The section heading is revised to read as set forth below;

■ b. In paragraphs (a), (b)(2)(i), (b)(4), and (b)(5)(ii), the phrase ''schedule'' is removed, and the phrase ''rate schedule or tariff'' is added in its place; and

■ c. In paragraph (b)(2)(ii), the phrase ''or she'' is added after the phrase ''he''.

§ 35.12 Filing of initial rate schedules and tariffs.

* * * * *

■ 14. Section 35.13 is amended as follows:

■ a. The section heading and paragraph (a) introductory text are revised;

■ b. In paragraph (a)(1), the phrase '', tariff, or service agreement'' is added following the phrase ''rate schedule''.

■ c. In paragraph (a)(2)(iii), the phrase '', tariff, or service agreement'' is added after the phrase ''rate schedule'', and the phrase ''schedule or tariff'' is removed in the first sentence.

■ d. In paragraphs (a)(2)(iv), (a)(2)(iv)(A) and (a)(2)(iv)(B), the phrase ''schedule'' is removed after the word ''rate'' in all places where it appears.

■ e. In paragraph (b)(1), the phrase ''schedule '' is removed.

■ f. In paragraph (b)(2), the phrase ''schedule'' is removed.

■ g. In paragraph (b)(3), the phrase ''schedule'' is removed, and the phrase ''mailed or e-mailed'' is removed, and the phrase ''posted'' is added in its place.

■ h. In paragraphs (b)(4), (b)(5), (b)(6), the phrase ''schedule'' is removed.

■ i. Paragraph (b)(8) is removed.

■ j. The heading to paragraph (c) introductory text is amended by removing the word ''schedule''.

■ k. In paragraph (c)(1), introductory text, remove the reference to ''or supplemented''.

■ l. In paragraph (c)(1) introductory text, the phrase '', tariff, or service agreement'' is added after the first phrase ''rate schedule,'' and the second phrase ''schedule or tariff'' is removed after the phrase ''rate''.

■ m. In paragraphs (c)(1)(i), (c)(1)(ii)(A), (c)(1)(ii)(B), (c)(2), (c)(3), the phrase ''schedule'' is removed following the word ''rate''.

■ n. In paragraphs (d)(1)(ii) introductory text, (d)(3)(i), (d)(3)(ii)(A), and (d)(3)(ii)(B), the phrase ''schedule'' is removed following the word ''rate''.

■ o. In paragraph (d)(5), the phrase ''cut or folded to letter size,'' is removed and the phrase ''provided in electronic format, shall be legible,'' is added in its place.

■ p. In paragraph (e)(1)(i), the phrase ''schedule'' is removed after the phrase ''rate''.

■ q. In paragraph (f), the phrase ''schedule'' is removed after the phrase ''rate'' anywhere it appears in the paragraph.

The revisions read as follows:

§ 35.13 Filing of changes in rate schedules, tariffs or service agreements.

* * * * *

(a) *General rule.* Every public utility shall file the information required by this section, as applicable, at the time it files with the Commission under § 35.1 all or part of a rate schedule, tariff or service agreement to supersede or otherwise change the provisions of a rate schedule, tariff or service agreement filed with the Commission under § 35.1. Any petition filed under § 385.207 of this chapter for waiver of any provision of this section shall specifically identify the requirement that the applicant wishes the Commission to waive.

* * * * *

§ 35.14 [Amended]

■ 15. Section 35.14 is amended as follows:

■ a. In paragraph (a), introductory text, the phrase ''(fuel clause)'' is added after phrase ''Fuel adjustment clause'', and the phrase '', tariffs or service agreements'' is added after the phrase ''rate schedules'' anywhere it appears in the paragraph's introductory text.

■ b. In paragraph (a)(7), the phrase ''schedule'' is removed in the second to last sentence.

■ 16. In § 35.15, paragraph (a) is revised, to read as follows:

§ 35.15 Notices of cancellation or termination.

(a) *General rule.* When a rate schedule, tariff or service agreement or part thereof required to be on file with the Commission is proposed to be cancelled or is to terminate by its own terms and no new rate schedule, tariff or service agreement or part thereof is to be filed in its place, a filing must be made to cancel such rate schedule, tariff or service agreement or part thereof at least sixty days but not more than one hundred-twenty days prior to the date such cancellation or termination is proposed to take effect. A copy of such notice to the Commission shall be duly posted. With such notice, each filing party shall submit a statement giving the reasons for the proposed cancellation or termination, and a list of the affected purchasers to whom the notice has been provided. For good cause shown, the

Commission may by order provide that the notice of cancellation or termination shall be effective as of a date prior to the date of filing or prior to the date the filing would become effective in accordance with these rules.

* * * * *

§ 35.16 [Amended]

■ 17. In § 35.16, the phrase ''on the form indicated in § 131.51 of this chapter'' is removed and the phrase ''with a tariff consistent with the electronic filing requirements in § 35.7 of this part'' is added in its place.

■ 18. Section 35.17 is amended as follows:

■ a. The section heading is revised;

■ b. Paragraphs (a), (b), and (c) are redesignated as paragraphs (c), (d), and (e), respectively;

■ c. New paragraphs (a) and (b) are added; and

■ d. In redesignated paragraphs (c), (d), and (e), the phrase ''tariff'' is removed and the phrase '', tariffs or service agreements'' is added in its place.

The revisions and additions read as follows:

§ 35.17 Withdrawals and amendments of rate schedules, tariff or service agreement filings.

(a) *Withdrawals of rate schedule, tariff or service agreement filings prior to Commission action.* (1) A public utility may withdraw in its entirety a rate schedule, tariff or service agreement filing that has not become effective and upon which no Commission or delegated order has been issued by filing a withdrawal motion with the Commission. Upon the filing of such motion, the proposed rate schedule, tariff or service agreement sections will not become effective under section 205(d) of the Federal Power Act in the absence of Commission action making the rate schedule, tariff or service agreement filing effective.

(2) The withdrawal motion will become effective, and the rate schedule, tariff or service agreement filing will be deemed withdrawn, at the end of 15 days from the date of filing of the withdrawal motion, if no answer in opposition to the withdrawal motion is filed within that period and if no order disallowing the withdrawal is issued within that period. If an answer in opposition is filed within the 15 day period, the withdrawal is not effective until an order accepting the withdrawal is issued.

(b) *Amendments or modifications to rate schedule, tariff or service agreement sections prior to Commission action on the filing.* A public utility may file to amend or modify, and may file a settlement that would amend or modify, a rate schedule, tariff or service agreement section contained in a rate schedule, tariff or service agreement filing that has not become effective and upon which no Commission or delegated order has yet been issued. Such filing will toll the notice period in section 205(d) of the Federal Power Act for the original filing, and establish a new date on which the entire filing will become effective, in the absence of Commission action, no earlier than 61 days from the date of the filing of the amendment or modification.

* * * * *

§ 35.18 [Amended]

■ 19. In § 35.18, paragraph (a), first sentence, the phrase '', tariff or service agreement'' is added after the phrase ''rate schedule''.

§ 35.21 [Amended]

■ 20. In § 35.21, footnote 5, the words ''footnote 1 to'' are removed.

§ 35.22 [Amended]

■ 21. In § 35.22, in the section heading, paragraph (a), paragraph (f) heading, and paragraph (f)(1), the phrase '', tariffs or service agreements'' is added after the phrase ''rate schedules''.

■ 22. In § 35.23, paragraph (b)(1)(ii) is revised to read as follows:

§ 35.23 General provisions.

(b) * * *

(1) * * *

(ii) Submit the revisions in accordance with § 35.7; and

* * * * *

§§ 35.1, 35.4, 35.5, 35.6, 35.11, 35.12, 35.13, and 35.17 [Amended]

■ 23. In addition to the amendments set forth above, in 18 CFR Part 35, the following nomenclature changes are made to the sections indicated:

■ a. In §§ 35.1(b) and (c), 35.4, 35.6, 35.11, 35.12(a), 35.13(a), 35.13(a)(1), 35.13(a)(2)(iii), 35.13(b)(1), 35.13(c)(1), 35.17(c), 35.17(d), and 35.17(e), all references to ''rate schedule'' are removed and ''rate schedule or tariff'' is added in their place.

■ b. In the headings of §§ 35.17(c), 35.17(d), and 35.17(e), all references to ''rate schedules'' are removed and ''rate schedules or tariffs'' is added in their place.

PART 131—FORMS

■ 24. The authority citation for part 131 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 131.51 [Removed]

■ 25. Section 131.51 is removed and reserved.

§ 131.52 [Amended]

■ 26. In § 131.52, the words ''(An original and one conformed copy to be submitted)'' are removed.

§ 131.53 [Removed]

■ 27, Section 131.53 is removed and reserved.

PART 154—RATE SCHEDULES AND TARIFFS

■ 28. The authority citation for part 154 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 31 U.S.C. 9701; 42 U.S.C. 7102–7352.

■ 29. In § 154.2, paragraph (b) is amended by removing the words ''either in book form or'', and paragraph (d) is revised to read as follows:

§ 154.2 Definitions.

* * * * *

(d) *Post means:* to make a copy of a natural gas company's tariff and contracts available during regular business hours for public inspection in a convenient form and place at the natural gas company's offices where business is conducted with affected customers; and, to serve each affected customer and interested state Commission in accordance with § 154.208 of this Part.

* * * * *

■ 30. Section 154.4 is revised to read as follows:

§ 154.4 Electronic filing of tariffs and related materials.

(a) *General rule.* All filings made in proceedings initiated under this part must be made electronically, including tariffs, rate schedules, service agreements, and contracts, or parts thereof, and material that relates to or bears upon such documents, such as cancellations, amendments, withdrawals, termination, or adoption of tariffs, and motions relating to suspension.

(b) *Requirement for signature.* All filings must be signed in compliance with the following:

(1) The signature on a filing constitutes a certification that the contents are true to the best knowledge and belief of the signer, and that the signer possesses full power and authority to sign the filing.

(2) A filing must be signed by one of the following:

(i) The person on behalf of whom the filing is made;

(ii) An officer, agent, or employee of the company, governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(iii) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(3) All signatures on the filing or any document included in the filing must comply, where applicable, with the requirements in § 385.2005 of this chapter with respect to sworn declarations or statements and electronic signatures.

(c) Format requirements for electronic filing. The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available on the Internet at *http://www.ferc.gov* and can be obtained at the Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Washington, DC 20426.

§ 154.5 [Amended]

■ 31. In § 154.5, the words ''375.307(b)(2)'' are removed and the words ''Part 375'' are added in their place.

■ 32. In § 154.7, paragraph (b) is revised to read as follows:

§ 154.7 General requirements for the submission of a tariff filing or executed service agreement.

* * * * *

(b) A certification of service to all customers and state commissions pursuant to § 154.2(d).

§ 154.101 [Removed]

■ 33. Section 154.101 is removed and reserved.

■ 34. Section 154.102 is revised to read as follows:

§ 154.102 Requirements for filing rate schedules and tariffs.

(a) All rates schedules, tariffs, and service agreements may be filed either by dividing the rate schedule, tariff, or agreement into individual tariff sheets, or tariff sections, or as an entire document except as provided in paragraph (b) of this section.

(b) Open access transportation tariffs must be filed either as individual sheets or sections. If filed as sections, each section must include only material of related subject matter and must be of reasonable length and must include at a minimum a section for each item listed in the table of contents under § 154.103 of this section and each topic listed under General Terms and Conditions of Service.

(c) Individual negotiated rate agreements, non-conforming service agreements, or other agreements that are included in the tariff may be filed as entire documents.

(d) The first section or sheet of the tariff must include:

(1) The FERC Gas Tariff Volume Number and Name of the Natural Gas Company, for example

FERC Gas Tariff Volume No. [ ] of [Name of Natural Gas Company]

(2) The name, title, address, telephone number, e-mail address and facsimile number of a person to whom communications concerning the tariff should be sent.

■ 35. Section 154.104 is revised to read as follows:

§ 154.104 Table of contents.

The table of contents must contain a list of the rate schedules, sections of the general terms and conditions, and other sections in the order in which they appear, showing the sheet number of the first page of each section or the section number. The list of rate schedules must consist of: The alphanumeric designation of each rate schedule, a very brief description of the service, and the sheet number of the first page of each rate schedule or the section number.

§ 154.106 [Amended]

■ 36. In § 154.106, paragraph (b) is removed and reserved.

■ 37. In § 154.112, the fourth through sixth sentences of paragraph (a) and the second sentence of paragraph (b) are revised to read as follows:

§ 154.112 Exception to form and composition of tariff.

(a) * * *. Modifications must be made by inserting revised sheets, sections or the entire document as appropriate. Special rate schedules must be included in a separate volume of the tariff. Each such separate volume must contain a table of contents which is incorporated as a sheet or section in the open access transmission tariff.

(b) * * * Such non-conforming agreements must be referenced in the open access transmission tariff.

§ 154.107 [Amended]

■ 38. Section 154.107 is amended as follows:

■ a. In paragraphs (d) and (e) all references to ''sheet'' are removed and ''sheet or section'' is added in their place.

■ b. In paragraph (e) the reference to ''or Gas Research Institute'' is removed.

■ 39. Section 154.201 (a) is revised to read as follows:

§ 154.201 Filing requirements.

* * * * *

(a) A list in the transmittal letter of the tariff sheets or sections being revised and a marked version of the sheets or sections to be changed or superseded showing additions and deletions. New numbers and text must be marked by either highlight, background shading, bold, or underline. Deleted text and numbers must be indicated by strike-through. Only those revisions appropriately designated and marked constitute the filing. Revisions to unmarked portions of the rate schedule or tariff are not considered part of the filing nor will any acceptance of the filing by the Commission constitute acceptance of such unmarked changes.

* * * * *

■ 40. Section 154.205 is amended as follows:

■ a. Paragraphs (a), (b), and (c) are redesignated as paragraphs (c), (d), and (e), respectively.

■ b. The section heading is revised, and paragraphs (a) and (b) are added to read as follows:

§ 154.205 Withdrawals and amendments of tariff filings and executed service agreements.

(a) *Withdrawals of tariff filings or service agreements prior to Commission action.* (1) A natural gas company may withdraw in its entirety a tariff filing or executed service agreement that has not become effective and upon which no Commission or delegated order has been issued by filing a withdrawal motion with the Commission. Upon the filing of such motion, the proposed tariff sheets, sections or service agreements will not become effective under section 4(d) of the Natural Gas Act in the absence of Commission action making the rate schedule or tariff filing effective.

(2) The withdrawal motion will become effective, and the rate schedule or tariff filing will be deemed withdrawn, at the end of 15 days from the date of filing of the withdrawal motion, if no answer in opposition to the withdrawal motion is filed within that period and if no order disallowing the withdrawal is issued within that period. If an answer in opposition is filed within the 15 day period, the withdrawal is not effective until an order accepting the withdrawal is issued.

(b) *Amendments or modifications to tariff sheets, sections or service agreements prior to Commission action on a tariff filing.* A natural gas company may file to amend or modify a tariff or service agreement contained in a tariff filing upon which no Commission or delegated order has yet been issued. Such filing will toll the notice period in section 4(d) of the Natural Gas Act for

the original filing, and establish a new date on which the entire filing will become effective, in the absence of Commission action, no earlier than 31 days from the date of the filing of the amendment or modification.

* * * * *

■ 41. In § 154.208, the section heading is revised, paragraph (d) is revised, and paragraphs (e) and (f) are added to read as follows:

§ 154.208 Service of tariff filings on customers and other parties.

* * * * *

(d) A customer or other party may designate a recipient of service. The filing company must serve the designated recipient, in accordance with this section, instead of the customer or other party. For the purposes of this section, service upon the designated recipient will be deemed service upon the customer or other party.

(e) The company may choose to effect service either electronically or by paper. Such service must be made in accordance with the requirements of Part 385 of this chapter.

(f) Unless it seeks a waiver of electronic service, each customer or party entitled to service of initial tariff filings under this section must notify the company of the e-mail address to which service should be directed. A customer or party may seek a waiver of electronic service by filing a waiver request under Part 390 of this chapter, providing good cause for its inability to accept electronic service.

§ 154.209 [Removed]

■ 42. Section 154.209 is removed and reserved.

§ 154.402 [Amended]

■ 43. In § 154.402, paragraph (b)(1), the word ''schedules'' is removed and the words ''rate schedules'' are added in its place.

§ 154.602 [Amended]

■ 44. Section 154.602 is amended by removing the phrase ''on the form indicated in § 250.2 or § 250.3 of this chapter, whichever is applicable'' and adding in its place the phrase ''tariff filing in the electronic format required by § 154.4''.

■ 45. Section 154.603 is revised as follows:

§ 154.603 Adoption of the tariff by a successor.

Whenever the tariff or contracts of a natural gas company on file with the Commission is to be adopted by another company or person as a result of an acquisition, or merger, authorized by a certificate of public convenience and necessity, or for any other reason, the succeeding company must file with the Commission, and post within 30 days after such succession, a tariff filing in the electronic format required by § 154.4 bearing the name of the successor company.

§§ 154.7, 154.111, 154.202, 154.206, 154.208, 154.402, and 154.403 [Amended]

■ 46. In addition to the amendments set forth above, in 18 CFR Part 154, the following nomenclature changes are made to the sections as amended:

■ a. In §§ 154.7(a)(5), 154.111(c), 154.202(b), 154.206(a), 154.208(a), all references to ''sheets'' are removed and ''sheets or sections'' is added in their place.

■ b. In §§ 154.402(b) introductory text, 154.402(b)(3), 154.403(b), all references to ''sheet'' are removed and ''sheet or section'' is added in their place.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 47. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w.

■ 48. Amend § 157.217 by adding a sentence to the end of paragraph (a)(4) to read as follows:

§ 157.217 Changes in rate schedules.

(a) * * *

(4) * * * This tariff filing must be filed in the electronic format required by § 154.4 of this chapter.

* * * * *

PART 250—FORMS

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

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

§§ 250.2, 250.3, and 250.4 [Removed]

■ 50. Sections 250.2, 250.3, and 250.4 are removed and reserved.

PART 281—NATURAL GAS CURTAILMENT UNDER THE NATURAL GAS POLICY ACT OF 1978

■ 51. The authority citation for part 281 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 2601–2645; 42 U.S.C. 7101–7352.

■ 52. In § 281.204, the first sentence in paragraph (a) is revised to read as follows:

§ 281.204 Tariff filing requirements.

(a) *General Rule.* Each interstate pipeline listed in § 281.202 shall file tariff sheets, in accordance with § 154.4 of this chapter, including an index of entitlements, which provides that if the interstate pipeline is in curtailment, natural gas will be delivered in accordance with the provisions of this subpart. * * *

* * * * *

§§ 281.204, 281.212, 281.213 [Amended]

■ 53. In addition to the amendments set forth above, in 18 CFR Part 281, the following nomenclature changes are made to the sections as amended:

■ a. In §§ 281.204(a), 281.212(a), 281.212(b), 281.212(c), 281.213(b), 281.213(d), 281.213(e), all references to ''sheets'' are removed and ''sheets or sections'' is added in their place.

■ b. In § 281.212, the section heading is amended to remove the reference to ''sheets.''

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 54. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

■ 55. In § 284.123, paragraph (e) is revised and paragraph (f) is added to read as follows:

§ 284.123 Rates and charges.

* * * * *

(e) *Filing requirements.* Within 30 days of commencement of new service, any intrastate pipeline that engages in transportation arrangements under this subpart must file with the Commission a statement that includes the pipeline's interstate rates, the rate election made pursuant to paragraph (b) of this section, and a description of how the pipeline will engage in these transportation arrangements, including operating conditions, such as quality standards and financial viability of the shipper. If the pipeline changes its operations, rates, or rate election under this subpart, it must amend the statement and file such amendments not later than 30 days after commencement of the change in operations or the change in rate election.

(f) *Electronic filing of statements, and related materials*—(1) *General rule.* All

filings made in proceedings initiated under this part must be made electronically, including rates and charges, or parts thereof, and material related thereto, statements, and all workpapers.

(2) *Requirements for signature.* All filings must be signed in compliance with the following:

(i) The signature on a filing constitutes a certification that the contents are true to the best knowledge and belief of the signer, and that the signer possesses full power and authority to sign the filing.

(ii) A filing must be signed by one of the following:

(A) The person on behalf of whom the filing is made;

(B) An officer, agent, or employee of the company, governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(C) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(iii) All signatures on the filing or any document included in the filing must comply, where applicable, with the requirements in § 385.2005 of this chapter with respect to sworn declarations or statements and electronic signatures.

(3) *Format requirements for electronic filing.* The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available on the Internet at *http://www.ferc.gov* and can be obtained at the Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Washington, DC 20426.

■ 56. In § 284.224, paragraph (e)(5) is revised to read as follows:

§ 284.224 Certain transportation and sales by local distribution companies.

* * * * *

(e) * * *

(5) *Filing Requirements.* Filings under this section must comply with the requirements of § 284.123 (f) of this part. The tariff filing requirements of Part 154 of this chapter shall not apply to transactions authorized by the blanket certificate.

* * * * *

PART 300—CONFIRMATION AND APPROVAL OF THE RATES OF FEDERAL POWER MARKETING ADMINISTRATIONS

■ 57. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 825s, 832–8321, 838–838k, 839–839h; 42 U.S.C. 7101–7352; 43 U.S.C. 485–485k.

■ 58. In § 300.10, paragraph (a)(4) is added to read as follows:

§ 300.10 Application for confirmation and approval.

(a) * * *

(4) *Electronic filing.* All material must be filed electronically in accordance with the requirements of § 35.7 of this chapter.

* * * * *

PART 341—OIL PIPELINE TARIFFS: OIL PIPELINE COMPANIES SUBJECT TO SECTION 6 OF THE INTERSTATE COMMERCE ACT

■ 59. The authority citation for part 341 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

■ 60. In § 341.0, paragraph (a)(11) is revised and paragraph (a)(13) is added to read as follows:

§ 341.0 Definitions; application.

(a) * * *

(11) *Tariff publication* means all parts of a filed tariff, including revised pages, supplements and sections.

* * * * *

(13) *Section* means an individual portion of a tariff that is tracked and accorded appropriate legal status (proposed, suspended, effective). A section is the smallest portion of a tariff that can be submitted as part of a tariff filing.

* * * * *

■ 61. Section 341.1 is revised to read as follows:

§ 341.1 Electronic filing of tariffs and related materials.

(a) *General rule.* Filings of tariff publications and related materials must be made electronically.

(b) *Requirement for signature.* All filings must be signed in compliance with the following:

(1) The signature on a filing constitutes a certification that the contents are true to the best knowledge and belief of the signer, and that the signer possesses full power and authority to sign the filing.

(2) A filing must be signed by one of the following:

(i) The person on behalf of whom the filing is made;

(ii) An officer, agent, or employee of the company, governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(iii) A representative qualified to practice before the Commission under § 385.2101 of this chapter who possesses authority to sign.

(3) All signatures on the filing or any document included in the filing must comply, where applicable, with the requirements in § 385.2005 of this chapter with respect to sworn declarations or statements and electronic signatures.

(c) *Format requirements for electronic filing.* The requirements and formats for electronic filing are listed in instructions for electronic filing and for each form. These formats are available on the Internet at *http://www.ferc.gov* and can be obtained at the Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Washington, DC 20426.

■ 62. Section 341.2 is amended as follows:

■ a. Paragraph (c)(3) is removed.

■ b. In paragraph (c)(1), the reference to '' or supplement numbers'' is removed and ''supplemental numbers, or tariff sections'' is added in its place.

■ c. Paragraphs (a) and (c)(2) are revised to read as follows:

§ 341.2 Filing requirements.

(a) *Service of filings.* (1) Carriers must serve tariff publications and justifications to each shipper and subscriber. The company may choose to effect service either electronically or by paper. Such service shall be made in accordance with the requirements of Part 385 of this chapter.

(2) Unless it seeks a waiver of electronic service, each customer or party entitled to service under this paragraph (a) must notify the company of the e-mail address to which service should be directed. A customer or party may seek a waiver of electronic service by filing a waiver request under Part 390 of this chapter providing good cause for its inability to accept electronic service.

* * * * *

(c) * * *

(2) *Certification.* Letters of transmittal must certify that the filing has been sent to each subscriber of the tariff publication pursuant to paragraph (a) of this section. For service made on paper, the letters of transmittal must certify that the filing has been sent to each customer or party by first class mail or other agreed-upon means. If there are no subscribers, letters of transmittal must so certify.

* * * * *

■ 63. In § 341.3, paragraphs (a), (b)(6)(ii), and (b)(10)(i) are revised, and paragraph (b)(10)(vi) is added to read as follows:

§ 341.3 Form of tariff.

(a) Tariffs may be filed either by dividing the tariff into individual loose-

leaf tariff sheets or tariff sections, or as an entire document.

(b) * * *

(6) * * *

(ii) Each rule must be given a separate item number, (*e.g.*, Item No. 1), and the title of each rule must be distinctive.

* * * * *

(10) * * *

(i) All tariff publications must identify where changes have been made in existing rates or charges, rules, regulations or practices, or classifications. One of the following letter designations or uniform symbols may be used to indicate the change, and insertions, other than to tables and rates, must be indicated by either highlight, background shading, bold, or underline, with deleted text indicated by strike-through:

Description	Option 1	Option 2
Increase	>	[I]
Decrease	<	[D]
Change in wording only.	^	[W]
Cancel	/	[C]
Reissued Item	~	[R]
Unchanged Rate	=	[U]
New	+	[N]

* * * * *

(vi) Only revisions to tariff provisions identified in the filing constitute the tariff filing. Revisions to unidentified portions of the rate schedule or tariff are not considered part of the filing nor will any acceptance of the filing by the Commission constitute acceptance of such unmarked changes.

* * * * *

§ 341.4 [Amended]

■ 64. In § 341.4, paragraph (c) is removed and reserved.

■ 65. In § 341.13, paragraph (a) and paragraph (b) introductory text are revised to read as follows:

§ 341.13 Withdrawal of proposed tariff publications.

(a) *Proposed tariff publications.* A proposed tariff publication which is not yet effective may be withdrawn at any time by filing a notice with the Commission with a certification that all subscribers have been notified by copy of such withdrawal.

(b) *Tariff publications that are subject to investigation.* A tariff publication that has been permitted to become effective subject to investigation may be withdrawn at any time by filing a notice with the Commission, which includes a transmittal letter, a certification that all subscribers have been notified of the withdrawal, and the previous tariff provisions that are to be reinstated upon withdrawal of the tariff publication under investigation. Such withdrawal shall be effective immediately upon the submission of the notice, unless a specific effective date is set forth in the notice, and must have the following effects:

* * * * *

PART 344—FILING QUOTATIONS FOR U.S. GOVERNMENT SHIPMENTS AT REDUCED RATES

■ 66. The authority citation for part 344 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

■ 67. Amend § 344.2 as follows:

■ a. Remove and reserve paragraph (b).

■ b. Revise paragraphs (a) and (c) to read as follows:

§ 344.2 Manner of submitting quotations.

(a) The quotation or tender must be submitted to the Commission concurrently with the submittal of the quotation or tender to the Federal department or agency for whose account the quotation or tender is offered or the proposed services are to be rendered.

(b) [Reserved]

(c) *Filing procedure.* (1) The quotation must be filed with a letter of transmittal that prominently indicates that the filing is in accordance with section 22 of the Interstate Commerce Act.

(2) All filings pursuant to this part must be filed electronically consistent with §§ 341.1 and 341.2 of this chapter.

* * * * *

PART 346—OIL PIPELINE COST-OF-SERVICE FILING REQUIREMENTS

■ 68. The authority citation for part 346 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

■ 69. In § 346.1, the introductory text is revised to read as follows:

§ 346.1 Content of filing for cost-of-service rates.

A carrier that seeks to establish rates pursuant to § 342.2(a) of this chapter, or a carrier that seeks to change rates pursuant to § 342.4(a) of this chapter, or a carrier described in § 342.0(b) of this chapter that seeks to establish or change rates by filing cost, revenue, and throughput data supporting such rates, other than pursuant to a Commission-approved settlement, must file, consistent with the requirements of §§ 341.1 and 341.2 of this chapter:

* * * * *

PART 347—OIL PIPELINE DEPRECIATION STUDIES

■ 70. The authority citation for part 347 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

■ 71. In § 347.1, remove the second sentence of paragraph (a), remove the last two sentences of paragraph (c), and revise paragraph (b) to read as follows:

§ 347.1 Material to support request for newly established or changed property account depreciation studies.

* * * * *

(b) All filings under this Part must be made electronically pursuant to the requirements of §§ 341.1 and 341.2 of this chapter.

* * * * *

PART 348—OIL PIPELINE APPLICATIONS FOR MARKET POWER DETERMINATIONS

■ 72. The authority citation for part 348 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

■ 73. In § 348.2, paragraphs (a) and (c) are revised to read as follows:

§ 348.2 Procedures.

(a) All filings under this Part must be made electronically pursuant to the requirements of §§ 341.1 and 341.2 of this chapter. A carrier must submit with its application any request for privileged treatment of documents and information under § 388.112 of this chapter and a proposed form of protective agreement.

* * * * *

(c) A letter of transmittal must describe the market-based rate filing, including an identification of each rate that would be market-based, and the pertinent tariffs, state if a waiver is being requested and specify the statute, section, subsection, regulation, policy or order requested to be waived. Letters of transmittal must be certified pursuant to § 341.1(b) of this chapter.

* * * * *

PART 375—THE COMMISSION

■ 74. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 75. Amend § 375.307 as follows:

■ a. Paragraph (b)(1)(i) is amended by removing the word ''and'' from the end of the paragraph.

■ b. Paragraph (b)(1)(ii) is amended by removing the period at the end of the

paragraph and adding ''; and'' in its place.

■ c. Paragraph (b)(1)(iii) is added to read as follows:

§ 375.307 Delegations to the Director of the Office of Energy Market Regulation.

* * * * *

(b) * * *

(1) * * *

(iii) Filings for administrative revisions to electronic filed tariffs.

* * * * *

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 76. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825v, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352, 16441,16451–16463; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

§ 385.203 [Amended]

■ 77. In § 385.203, paragraph (a)(4), the reference to ''sheets'' is removed and ''sheets or sections'' is added in its place.

■ 78. In § 385.215, paragraph (a)(2) is amended by adding a new first sentence to read as follows:

§ 385.215 Amendment of pleadings and tariff or rate filings (Rule 215).

(a) * * *

(2) A tariff or rate filing may be amended or modified only as provided in the regulations under this chapter. * * *

* * * * *

■ 79. In § 385.216, the heading and paragraph (a) are revised to read as follows:

§ 385.216 Withdrawal of pleadings and tariff or rate filings (Rule 216).

(a) *Filing.* Any participant, or any person who has filed a timely motion to intervene which has not been denied, may seek to withdraw a pleading by filing a notice of withdrawal. The procedures provided in this section do not apply to withdrawals of tariff or rate filings, which may be withdrawn only as provided in the regulations under this chapter.

* * * * *

§ 385.217 [Amended]

■ 80. In § 385.217, paragraph (d)(1)(iii), the reference to ''sheets'' is removed and ''sheets or sections'' is added in its place.

§ 385.2011 [Amended]

■ 81. In § 385.2011, paragraph (b)(1) is removed and reserved, and paragraphs (b)(4) and (b)(5) are removed.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

Commenters and Abbreviations

American Gas Association (AGA)
Arizona Public Service Company (APS)
Association of Oil Pipe Lines (AOPL)
Bonneville Power Administration (Bonneville)
California Independent System Operator Corporation (CAISO)
Duke Energy Corporation (Duke Energy)
Edison Electric Institute (EEI)
Entergy Services, Inc. (Entergy)
FirstEnergy Service Company (FirstEnergy)
Interstate Natural Gas Association of America (INGAA)
ISO New England, Inc. (ISO New England)
Midwest Independent Transmission System Operator, Inc. (Midwest ISO)
Nevada Power Company and Sierra Pacific Power Company (Nevada Power)
New England Participating Transmission Owners Administrative Committee (New England PTOs)
Public Service Electric and Gas Company and PSEG Energy Resources & Trade LLC (PSEG)
Southern California Edison Company (Southern California Edison)
TransCanada Corporation (TransCanada)
UNICON, Inc. (UNICON)

[FR Doc. E8–22500 Filed 10–2–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No. WY–036–FOR; Docket ID OSM–2008–0008]

Wyoming Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Wyoming abandoned mine land reclamation (AMLR) plan (hereinafter referred to as the ''Wyoming plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Wyoming intended to revise its plan by submitting a revision to W.S. 35–11–1210 to correct an inadvertent error in the statute that was enacted during the 2007 Legislative Session. Specifically, the amendment clarifies that W.S. § 35–11–1210 only applies to SMCRA section 411(h)(1) funds.

DATES: *Effective Date:* October 3, 2008.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Casper Field Office Director. Telephone: (307) 261–6550. Internet address: *jfleischman@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Plan

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines.

On February 14, 1983, the Secretary of the Interior approved Wyoming's AMLR Plan. You can find general background information on the Wyoming Plan, including the Secretary's findings and the disposition of comments, in the February 14, 1983, **Federal Register** (48 FR 6536). OSM announced in the May 25, 1984, **Federal Register** (49 FR 22139), the Director's decision accepting certification by Wyoming that it had addressed all known coal-related impacts in the State that were eligible for funding under the Wyoming Plan. Wyoming could then proceed in reclaiming low priority non-coal projects. The Director accepted Wyoming's proposal that it would seek immediate funding for reclamation of any additional coal-related problems that occur during the life of the Wyoming Plan. You can find later actions concerning Wyoming's Plan and plan amendments at 30 CFR 950.35.

II. Submission of the Proposed Amendment

By letter dated March 21, 2008, Wyoming submitted a proposed

amendment to the Wyoming Reclamation Plan (Administrative Record Document ID OSM–2008–0008–0005). Wyoming submitted the amendment in response to a letter sent to the State dated January 18, 2008, from the Regional Director, Western Region of OSM (Administrative Record Document ID OSM–2008–0008–0007). Pursuant to 30 CFR 884.15(d), OSM directed Wyoming to resolve a statutory conflict regarding two accounts established to receive funds from the Federal government under the SMCRA program.

Specifically, OSM stated it appears that Wyoming's new statute at W.S. § 35–11–1210 conflicts with existing statute W.S. § 35–11–1203, which was established to receive funds to carry out the Reclamation Plan including coal reclamation. W.S. § 35–11–1210 was passed in 2007 and established an account to receive funding under new Section 411(h) of SMCRA. These funds are not required to be spent on reclamation projects.

Wyoming's proposed amendment clarifies that the account established by W.S. § 35–11–1210 is solely for the purpose of receiving funds from the Federal government pursuant to SMCRA Section 411(h)(1) and that these funds are separate and in addition to funds distributed to the account established by W.S. § 35–11–1203.

We announced receipt of the proposed amendment in the June 2, 2008, **Federal Register** (73 FR 31392). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record Document ID No. OSM–2008–0008–0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 2, 2008. We received comments from two Federal agencies and one State entity.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15. We are approving the amendment.

A. Minor Revisions to Wyoming's Statutes and Plan Provisions

In response to a letter dated January 18, 2008, from the Regional Director, Western Region of OSM and pursuant to 30 CFR 884.15(d), Wyoming proposes a minor editorial change to subparagraph (b) of newly-created W.S. § 35–11–1210 and its Reclamation Plan that is intended to provide clarification and correct an inadvertent error in the statutory amendment that was enacted during the 2007 Wyoming Legislative Session. Specifically, new statute W.S. § 35–11–1210 was passed in 2007 and established the Abandoned Mine Land Funds Reserve Account pursuant to Section 411(h) of the SMCRA Amendments of 2006 that is not required to be spent on reclamation projects. Conversely, existing statute W.S. § 35–11–1203 established an account to receive funds to carry out the State Reclamation Plan, including coal reclamation. OSM's concern, as stated in the January 18, 2008 letter, was that establishment of these two funds creates a statutory conflict wherein funding of Wyoming's Reclamation Plan is not assured. Accordingly, OSM is seeking assurance that Wyoming will reclaim its remaining coal abandoned mine land problems.

Wyoming's proposed amendment to subparagraph (b) clarifies that the account established by W.S. § 35–11–1210 is established solely to receive funds from the Federal government pursuant to SMCRA amendments of 2006 to Section 411(h)(1) and that these funds are separate and in addition to funds distributed to the account established by W.S. § 35–11–1203, which remains in place to receive funds to carry out the State Reclamation Plan including coal reclamation. Wyoming had previously committed to spend a minimum of $30 million dollars per year on coal reclamation work until coal work is completed as a condition of OSM's payment to the State under SMCRA Section 411(h) in a letter dated February 4, 2007 (Administrative Record Document ID OSM–2008–0008–0006).

Wyoming's clarification and assurance that funds received through establishment of the Abandoned Mine Land Funds Reserve Account will not be commingled with monies received to carry out coal reclamation under the State Reclamation Plan is in accordance with section 405(h) of SMCRA, and addresses the programmatic concerns raised by OSM under 30 CFR 884.15(d). For these reasons, we are approving Wyoming's proposed statutory amendment.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Document ID No. OSM–2008–0008–0008) and one comment was received.

Specifically, the University of Wyoming submitted a comment in support of the amendment by stating that it is in agreement with the proposed change to Wyoming Statute W.S. 35–11–1210 (Administrative Record Document ID No. OSM–2008–0008–0004).

Federal Agency Comments

Under 30 CFR 884.14(a)(2) and 884.15(a), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the State plan (Administrative Record Document ID No. OSM–2008–0008–0008). We received comments from two Federal Agencies.

The Bureau of Reclamation (BOR) commented in an April 17, 2008 letter (Administrative Record Document ID No. OSM–2008–0008–0003), and the Bureau of Land Management (BLM) commented in a May 2, 2008 letter (Administrative Record Document ID No. OSM–2008–0008–0002).

The BOR indicated that it did not have comments on the proposed amendment.

The BLM commented that although it recognizes that OSM's priority under the 2006 Amendments [to SMCRA] is to fund reclamation of coal mines, it also wants to ensure that enough money is available to fund reclamation of non-coal abandoned mines on BLM lands. The BLM goes on to explain that work on many of these projects may be mothballed due to the requirements to finish the coal sites first, and notes that it is unclear whether these non-coal sites will be able to obtain SMCRA funding in the future. Lastly, the BLM states its wish to ensure that the State Legislature and OSM consider its needs when fund requests for grants to use monies in the Abandoned Mine Reclamation Fund are submitted.

In response, OSM agrees that there are hard rock abandoned mine land problems in Wyoming and we acknowledge that they present both health and safety concerns. Unfortunately, OSM can't provide assurance to the BLM that the Wyoming AML Program will continue to reclaim abandoned hard rock mine problems with funds the State receives under the 2006 Amendments to SMCRA. Specifically, it is solely up to the Wyoming Legislature to determine if it wants to fund reclamation of abandoned hard rock mine problems as part of giving priority to addressing impacts of mineral development with funds the State receives under Section 411(h)(1) of SMCRA.

V. OSM's Decision

Based on the above finding, we approve Wyoming's proposed amendment submitted on March 21, 2008.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 950, which codify decisions concerning the State plan. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 405(d) of SMCRA requires that the State have a program that is in compliance with the procedures, guidelines, and requirements established under the Act. Making this regulation effectively immediately will expedite that process. SMCRA requires consistency of Wyoming and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of Wyoming's AMLR plans and revisions thereof because each plan is drafted and promulgated by a specific State, not by OSM. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR part 884.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

No environmental impact statement is required for this rule because agency decisions on proposed State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) by the Manual of the Department of the Interior (516 DM 13.5(B)(29).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

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

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 950

Abandoned mine reclamation programs, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 11, 2008.

Allen D. Klein,

Director, Western Region.

■ For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 950—STATE ABANDONED MINE LAND RECLAMATION PROGRAMS

■ 1. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 950.35 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 950.35 Approval of Wyoming abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * * *		
March 21, 2008	October 3, 2008.	Wyoming Statute (W.S.) § 35–11–1210(b)

[FR Doc. E8–23368 Filed 10–2–08; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 411, 412, 413, 422, and 489

[CMS–1390–CN; CMS–1531–CN; CMS–1385–CN2]

RIN 0938–AP15; RIN 0938–AO35; RIN 0938–AO65

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2009 Rates; Payments for Graduate Medical Education in Certain Emergency Situations; Changes to Disclosure of Physician Ownership in Hospitals and Physician Self-Referral Rules; Updates to the Long-Term Care Prospective Payment System; Updates to Certain IPPS-Excluded Hospitals; and Collection of Information Regarding Financial Relationships Between Hospitals; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rules.

SUMMARY: This document corrects technical and typographical errors that appeared in the final rule published in the **Federal Register** on August 19, 2008, entitled ''Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2009 Rates; Payments for Graduate Medical Education in Certain Emergency Situations; Changes to Disclosure of Physician Ownership in Hospitals and Physician Self-Referral Rules; Updates to the Long-Term Care Prospective Payment System; Updates to Certain IPPS-Excluded Hospitals; and Collection of Information Regarding Financial Relationships Between Hospitals.''

DATES: *Effective Date:* Except for the items listed in section IV.B.3.a. through e. of this notice, the items listed in this correction notice are effective on October 1, 2008. The items listed in section IV.B.3.a. through e. of this notice are effective on October 1, 2009.

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter (410) 786–4487, Corrections to the preamble and addendum. Donald Romano, (410) 786–1401 or Lisa Ohrin, (410) 786–4565, Corrections to the regulations text for part 411.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. E8–17914 of August 19, 2008 (73 FR 48434), the final rule entitled Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2009 Rates; Payments for Graduate Medical Education in Certain Emergency Situations; Changes to Disclosure of Physician Ownership in Hospitals and Physician Self-Referral Rules; Updates to the Long-Term Care Prospective Payment System; Updates to Certain IPPS-Excluded Hospitals; and Collection of Information Regarding Financial Relationships Between Hospitals'' (hereinafter referred to as the FY 2009 IPPS final rule) there were a number of technical and typographical errors that are identified and corrected in the Correction of Errors section below. We note that the FY 2009 IPPS final rule had several effective dates (see 73 FR 48343); and therefore, we are conforming the effective dates of the items listed in this notice with the effective dates specified in the FY 2009 IPPS final rule.

II. Summary of Errors

A. Errors in the Preamble

On page 48434, in the effective dates section of the final rule, we specified that § 411.357(p)(1)(i)(A) and (B) are effective on October 1, 2009. However, we made a technical error in codifying these paragraphs (see sections II.B. and IV.B.3.e.(B). of this notice). To ensure that the cross-reference is consistent with the regulations in § 411.357(p), we are correcting the cross-reference in section IV.A.1 of this notice.

On pages 48491, 48497, and 48773, we made inadvertent typographical errors in two figures and a date. We correct these errors in section IV.A.2, 3, and 8 of this notice.

On page 48509, we stated that we were finalizing several codes and that these codes will be added to the MCE edit for males only. However, through an inadvertent error the codes were not included in the final FY 2009 MCE edits. Therefore, in section IV.A.4. of this notice, we correct this discussion by adding language to note that the codes for MCE edit for males only will be added to the MCE codes for FY 2010.

On page 48566, we discuss the analysis conducted by Acumen comparing MedPAC's recommended wage indices to the current CMS wage index. In section IV.A.5 of this notice, we correct this discussion by adding a parenthetical statement to clarify that the wage index data that we provided did not include the effects of sections 505 and 508 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).

On page 48646, we discuss the deadline for submission of emergency Medicare graduate medical education (GME) affiliation agreements. In our example, we incorrectly stated the date by which hospitals are permitted to submit an emergency Medicare GME Affiliation agreement for the period from March 1, 2009, to June 30, 2009, and the period from July 1, 2009, to June 30, 2010. The dates referenced were August 28, 2009, and August 28, 2010, respectively. In section IV.A.6 of this correction notice, we corrected these inadvertent errors.

On page 48648, we discuss the rolling average and cap adjustments for FTE residents. In this discussion, we incorrectly stated that FTE residents training in new teaching hospitals and in new residency programs at existing teaching hospitals are excluded from the rolling average for the minimum accredited length of the program. In section IV.A.7. of this notice, we have corrected this error by revising this sentence to clarify that, in accordance with the regulations at § 413.79(d)(5), the exclusion from the rolling average applies for new programs that qualify for the cap adjustment under § 413.79(e).

B. Errors in the Regulation Text

On page 48751, in the regulations text for § 411.353(c)(1)(ii) and (iii) and (g)(1), we made grammatical and typographical errors. We are correcting these errors in section IV.B.1. of this notice.

On page 48752, in the regulations text for § 411.354(c)(1)(ii), we inadvertently omitted the quotation marks for the phrase ''stand in the shoes''. In section IV.B.2. of this notice, we are correcting this error.

On pages 48752 and 48753, in the regulations text for § 411.357, we note the following errors:

- In paragraphs (a)(5)(ii)(B), (b)(4)(ii)(B), (l)(3)(ii), and (p)(1)(i)(B) regarding rental of office space, rental of equipment, fair market value compensation, and indirect compensation arrangements, respectively, we inadvertently included the phrase ''between the parties'' instead of the phrase ''by the lessor to the lessee''. Therefore, our regulations text for these paragraphs do not accurately reflect our policy in the FY 2009 IPPS final rule (see 73 FR 48713 through 48714). We are correcting these errors in section IV.B.3., a., c., d., and e.D. of this notice.
- In paragraph (b)(4)(ii)(A) regarding rental changes, we made a grammatical error in using the term ''by'' instead of ''through''. We are correcting this error in section IV.B.3.b. of this notice.
- In paragraph (p)(1)(i), we inadvertently included the last sentence as part of this paragraph instead of making that sentence the beginning of paragraph (p)(1)(ii). In section IV.B.3.e.B.., we are correcting this error by redesignating this language as paragraph (p)(1)(ii).
- In paragraph (p)(1)(i)(A) (redesignated as paragraph (p)(1)(ii)(A)) (see section IV.B.3.e.C. of this notice) regarding compensation for the rental of office space or equipment, we inadvertently omitted the term ''on'' from the phrase ''performed or business generated through''. We are correcting this omission in section III.B.3.e.(3). of this notice.
- In paragraphs (p)(1)(ii) and (iii), we inadvertently included regulatory text that also appears in paragraphs (p)(2) and (3) and is applicable to paragraph (p) in its entirety. In section IV.B.3.e.A. of this notice, we are correcting these errors by removing paragraphs (p)(1)(ii) and (iii).
- In paragraph (r)(2)(ii) regarding remuneration of obstetrical malpractice insurance subsidies, we made grammatical errors when using the term ''payments''. In section IV.B.3.f.A. of this notice, we are correcting the term to read ''payment''.
- In paragraph (r)(3)(ii)(B) regarding the cost of malpractice insurance premiums, we inadvertently included the phrase ''rural area or'' which does not conform to the policy in the FY 2009 IPPS final rule (see 73 FR 48734). In section IV.B.3.f.B. of this notice, we are correcting this error by removing the phrase.

C. Errors in the Addendum

On pages 48827 and 48881, in Tables 2 and 3, we had erroneous wage data for provider number 300005 and rural New Hampshire, respectively. Therefore, we are correcting these errors in sections IV.C.1. and 2. of this notice. We note that the corrections to the wage data for the New Hampshire provider specified in this notice are consistent with our regulations at 42 CFR 412.64(k)(2)(ii). We also note that wage data corrections for this provider are also reflected in the FY 2009 final rates, wage indices, budget neutrality factors and tables included in the notice subsequent to the FY 2009 IPPS final rule published elsewhere in this **Federal Register**.

On pages 49044, 49046, and 49060, we made technical errors in the MS–LTC–DRG titles for several MS–LTC–DRGs (that is, MS–LTC–DRGs 154 through 156, 250, 251 and 864). We need to correct these titles so that they are consistent with the MS–DRG titles presented in Table 5 of the FY 2009 IPPS final rule since the patient classification system utilized under the LTCH PPS uses the same diagnosis-related groups (DRGs) as those used under the IPPS. Therefore, we are correcting these errors in section IV.C.3. of this notice.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. Therefore, we are waiving proposed rulemaking and the 30-day delayed effective date for the technical corrections in this notice. This notice merely corrects typographical and technical errors in the preamble, regulations text, and addendum of the FY 2009 IPPS final rule and does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this notice is intended to ensure that the FY 2009 IPPS final rule accurately reflects the policies adopted in the final rule. Therefore, we find that undertaking further notice and comment procedures to incorporate these corrections into the final rule or delaying the effective date of these changes is unnecessary and contrary to the public interest.

IV. Correction of Errors

In FR Doc. E8–17914 of August 19, 2008 (73 FR 48434), make the following corrections:

A. Corrections to the Preamble

1. On page 48434, second column, third full paragraph, line 8, the cross-reference ''(p)(1)(i)(A) and (B)'' is corrected to read ''(p)(1)(ii)''.

2. On page 48491, top half of the page, in the untitled table, second column (CC/MCC (ICD–9–CM codes)), line 25, the figures ''81.31–81.83'' are corrected to read ''81.31–81.38''.

3. On page 48497, first column, fourth full paragraph, last line, the phrase ''October 1, 2009'' is corrected to read ''October 1, 2008''.

4. On page 48509, first column, fifth full paragraph, last line is corrected by adding the following sentences:

''However, there was an inadvertent omission of these codes from the MCE product. Therefore, we will add these codes in the MCE for FY 2010.''

5. On page 48566, third column, first full paragraph, line 11, after the phrase ''FY 2007.'' and before the word ''Acumen's'', the text is corrected by adding the following parenthetical sentence:

''(Note that the CMS final wage index Acumen analyzed excludes or removes the effects of sections 505 and 508 of MMA.)''

6. On page 48646, first column, first paragraph

a. Line 36, the date ''August 28, 2009'' is corrected to read ''December 29, 2009''.

b. Line 43, the date ''August 28, 2010'' is corrected to read ''December 29, 2010''.

7. On page 48648, third column, first paragraph, line 7, the sentence ''However, FTE residents training in new teaching hospitals and in new residency programs at existing teaching hospitals are excluded from the rolling average for the minimum accredited length of the program (dental and podiatry residents are always exempt from the rolling average.'' is corrected to read ''However, FTE residents training in new residency training programs that qualify for cap adjustments under § 413.79(e) are excluded from the rolling average for the minimum accredited length of the program.''

8. On page 48773, second column, last paragraph, line 8, the figure ''0.09'' is corrected to read ''0.9''.

B. Corrections to the Regulation Text

§ 411.353 [Corrected]

■ 1. Section 411.353 is corrected by—

■ a. On page 48751, in the second column, in paragraphs (c)(1)(ii) and (iii), removing the second and third commas.

■ b. On the same page, in the third column, in paragraph (g)(1)(i), removing the word ''complied' and adding the word ''complies'' in its place.

■ c. On same page in the same column, in paragraph (g)(1)(ii)(A), removing the phrase ''Inadvertent, and the parties obtain the required signature(s) within 90 consecutive calendar days immediately following the date on which the compensation arrangement becomes'' and adding the phrase ''Inadvertent and the parties obtain the required signature(s) within 90 consecutive calendar days immediately following the date on which the compensation arrangement became'' in its place.

■ d. On the same page, in the same column, in paragraph (g)(1)(ii)(B), removing the phrase ''Not inadvertent, and the parties obtain the required signature(s) within 30 consecutive calendar days immediately following the date on which the compensation arrangement becomes'' and adding the phrase ''Not inadvertent and the parties obtain the required signature(s) within 30 consecutive calendar days immediately following the date on which the compensation arrangement became'' in its place.

§ 411.354 [Corrected]

■ 2. On page 48752, in the first columne, § 411.354(c)(1)(ii) introductory text is corrected by adding quotation marks to the phrase ''stand in the shoes''.

§ 411.357 [Corrected]

■ 3. Section 411.357 is corrected by—

■ a. On page 45752, in the third column, in paragraph (a)(5)(ii)(B), removing the phrase ''between the parties'' and adding the phrase ''by the lessor to the lessee'' in its place.

■ b. On the same page, in the same column, in paragraph (b)(4)(ii)(A), removing the word ''by'' and adding the word ''through'' in its place.

■ c. On the same page, in the same column, in paragraph (b)(4)(ii)(B), removing the phrase ''between the parties'' and adding the phrase ''by the lessor to the lessee'' in its place.

■ d. On page 48753, in the first column, in paragraph (l)(3)(ii), removing the phrase ''between the parties'' and adding the phrase ''by the lessor to the lessee'' in its place.

■ e. On the same page, in the second column, in paragraph (p)(1)—

■ A. Removing paragraphs (p)(1)(ii) and (iii).

■ B. Redesignating the last sentence of paragraph (p)(1)(i) as paragraph (p)(1)(ii).

■ C. In newly redesignated paragraph (p)(1)(ii)(A), removing the phrase ''performed or business generated through'' and adding the phrase ''performed on or business generated through'' in its place.

■ D. In newly redesignated paragraph (p)(1)(ii)(B), removing the phrase ''between the parties'' and adding the phrase ''by the lessor to the lessee'' in its place.

■ f. In paragraph (r)—

■ A. On the same page, in the third column, in paragraph (r)(2)(ii), removing the phrase ''specifies the payments to be made by the hospital, federally qualified health center, or rural health clinic and the terms under which the payments are'' and adding the phrase ''specifies the payment to be made by the hospital, federally qualified health center, or rural health clinic and the terms under which the payment is'' in its place.

■ B. On page 48754, in the first column, in paragraph (r)(3)(ii)(B), removing the phrase ''rural area or''.

C. Corrections to the Addendum

1. On page 48827, in Table 2.—Hospital Case-Mix Indexes for Discharges Occurring in Federal Fiscal Year 2007; Hospital Wage Indexes for Federal Fiscal Year 2009; Hospital Average Hourly Wages for Federal Fiscal Years 2007 (2003 Wage Data), 2008 (2004 Wage Data), and 2009 (2005 Wage Data); and 3-Year Average of Hospital Average Hourly Wages, the FY 2009 average hourly wage and the 3-year average hourly wage for provider number 300005 are corrected to read as follows:

Provider No.	Average hourly wage FY 2009 [1]	Average hourly wage** (3 years)
300005	28.2602	28.8266

2. On page 48881, in Table 3B.—FY 2009 and 3-Year* Average Hourly Wage for Rural Areas by CBSA, the FY 2009 Average Hourly Wage and 3-Year Average Hourly wage for the CBSA Code 30 are corrected to read as follows:

CBSA code	Nonurban area	FY 2009 average hourly wage	3-Year average hourly wage
30	New Hampshire.	33.1415	32.7814

3. On pages 49044, 49046, and 49060, in Table 11.—FY 2009 MS–LTC–DRGs, Relative Weights, Geometric Average Length of Stay, and Short-Stay Outlier (SSO) Threshold, the MS–LTC–DRGs titles for the listed MS–LTC–DRGs are corrected as follows:

MS–LTC–DRG	MS–LTC–DRG Title
154	Other ear, nose, mouth, and throat diagnoses w MCC.
155	Other ear, nose, mouth, and throat diagnoses w CC.
156	Other ear, nose, mouth, and throat diagnoses w/o CC/MCC.
250	Perc cardiovasc proc w/o coronary artery stent w MCC.
251	Perc cardiovasc proc w/o coronary artery stent w/o MCC.
864	Fever.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 25, 2008.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. E8–23082 Filed 9–29–08; 11:15 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA 08–2062]

List of Office of Management and Budget (OMB) Approved Information Collection Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the Commission's list of Office of Management and Budget (OMB) approved public information collection requirements with their associated OMB expiration dates. This list will provide the public with a current list of public information collection requirements approved by OMB and their associated control numbers and expiration dates as of August 29, 2008.

DATES: Effective October 3, 2008.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214 or by e-mail to *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This document adopted on September 19, 2008 and released on September 19, 2008 by the Managing Director in DA 08–2062 revised 47 CFR 0.408 in its entirety.

1. Section 3507(a)(3) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(3), requires agencies to display a current control number assigned by the Director, Office of Management and Budget (''OMB'') for each agency information collection requirement.

2. Section 0.408 of the Commission's rules displays the OMB control numbers assigned to the Commission's public information collection requirements that have been review and approved by OMB.

3. Authority for this action is contained in Section 4(i) of the Communications Act of 1934 (47 U.S.C. 154(i)), as amended, and section 0.231 of the Commission's Rules. Since this amendment is a matter of agency organization procedure or practice, the notice and comment and effective date provisions of the Administrative Procedure Act do not apply. See 5 U.S.C. 553(b)(A)(d). For this reason, this rulemaking is not subject to the Congressional Review Act and will not be reported to Congress and the Government Accountability Office (GAO). See 5 U.S.C. 801(a)(1)(A).

4. Accordingly, *it is ordered, that* section 0.408 of the rules is revised as set forth in the revised text effective on October 3, 2008.

5. Persons having questions on this matter should contact Judith B. Herman at (202) 418–0214 or e-mail to *Judith-B.Herman@fcc.gov*.

List of Subjects in 47 CFR Part 0

Reporting, recordkeeping and third party disclosure requirements.

Federal Communications Comission

Marlene H. Dortch,

Secretary.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 0 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Section 0.408 is revised to read as follows.

§ 0.408 OMB control numbers and expiration dates assigned pursuant to the Paperwork Reduction Act of 1995.

(a) *Purpose.* This section displays the control numbers and expiration dates for the Commission information collection requirements assigned by the Office of Management and Budget (''OMB'') pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission intends that this section comply with the requirement that agencies ''display'' current control numbers and expiration dates assigned by the Director, OMB, for each approved information collection requirement. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number. Questions concerning the OMB control numbers and expiration dates should be directed to the Associate Managing Director—Performance Evaluation and Records Management, (''AMD–PERM''), Office of Managing Director, Federal Communications Commission, Washington, DC 20554 by sending an e-mail to *Judith-B.Herman@fcc.gov*.

(b) *Display.*

OMB control No.	FCC form number or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–0004 ...	Secs. 1.1307 and 1.1311, Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, ET Docket No. 93–62.	03/31/11
3060–0009 ...	FCC 316	06/30/11
3060–0010 ...	FCC 323	01/31/09
3060–0016 ...	FCC 346	03/31/11
3060–0017 ...	FCC 347	05/31/09
3060–0027 ...	FCC 301	08/31/11
3060–0029 ...	FCC 302–DTV	05/31/11
3060–0031 ...	FCC 314, FCC 315	06/30/11
3060–0053 ...	FCC 703	06/30/11
3060–0055 ...	FCC 327	10/31/09
3060–0056 ...	Part 68	05/31/11
3060–0057 ...	FCC 731	03/31/11
3060–0059 ...	FCC 740	02/28/10
3060–0061 ...	FCC 325	Pending OMB Approval.
3060–0065 ...	FCC 442	06/30/11
3060–0068 ...	FCC 702	06/30/11
3060–0075 ...	FCC 345	06/30/11
3060–0076 ...	FCC 395	12/31/10
3060–0084 ...	FCC 323–E	03/31/11
3060–0093 ...	FCC 405	01/31/09
3060–0095 ...	FCC 395–A	Pending OMB Approval.
3060–0106 ...	Part 43	05/31/10
3060–0110 ...	FCC 303–S	06/30/11
3060–0113 ...	FCC 396/396–A	12/31/09
3060–0126 ...	Sec. 73.1820	12/31/08
3060–0132 ...	FCC 1068A	11/30/09

OMB control No.	FCC form number or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–0139 ...	FCC 854	Pending OMB Approval.
3060–0147 ...	Sec. 64.804	01/31/09
3060–0149 ...	Part 63, Section 214, Secs. 63.01, 63.602; 63.50, 63.51, 63.52, 63.53; 63.61, 63.62, 63.63; 63.65, 63.66; 63.71; 63.90; 63.500, 63.501; 63.504, 63.505 and 63.601.	03/31/11
3060–0157 ...	Sec. 73.99	02/28/09
3060–0161 ...	Sec. 73.61	05/31/09
3060–0166 ...	Part 42	11/30/10
3060–0168 ...	Sec. 43.43	09/30/09
3060–0169 ...	Secs. 43.51 and 43.53	Pending OMB Approval.
3060–0170 ...	Sec. 73.1030	12/31/10
3060–0171 ...	Sec. 73.1125	12/31/10
3060–0174 ...	Secs. 73.1212, 76.1615, and 76.1715	02/28/09
3060–0175 ...	Sec. 73.1250	06/30/11
3060–0176 ...	Sec. 73.1510	02/28/09
3060–0178 ...	Sec. 73.1560	01/31/09
3060–0179 ...	Sec. 73.1590	10/31/10
3060–0180 ...	Sec. 73.1610	10/31/10
3060–0182 ...	Sec. 73.1620	05/31/10
3060–0184 ...	Sec. 73.1740	10/31/10
3060–0185 ...	Sec. 73.3613	02/28/11
3060–0188 ...	Call Sign Reservation and Authorization System	11/30/10
3060–0190 ...	Sec. 73.3544	01/31/10
3060–0192 ...	Sec. 87.103	09/30/10
3060–0202 ...	Sec. 87.37	09/30/09
3060–0204 ...	Sec. 90.20(a)(2)(v)	01/31/09
3060–0207 ...	Part 11	08/31/11
3060–0208 ...	Sec. 73.1870	09/30/09
3060–0213 ...	Sec. 73.3525	12/31/09
3060–0214 ...	Secs. 73.3526 and 73.3527; Secs. 76.1701 and 73.1943	Pending OMB Approval.
3060–0216 ...	Sec. 73.3538 and Sec. 73.1690(e)	02/28/11
3060–0219 ...	Sec. 90.20(a)(2)(xi)	11/30/08
3060–0221 ...	Sec. 90.155 (b) and (d)	01/31/11
3060–0222 ...	Sec. 97.213	09/30/09
3060–0223 ...	Sec. 90.129	01/31/09
3060–0228 ...	Sec. 80.59	07/31/10
3060–0233 ...	Part 36	11/30/09
3060–0236 ...	Sec. 74.703	06/30/11
3060–0248 ...	Sec. 74.751	02/28/11
3060–0249 ...	Secs. 74.781, 74.1281, and 78.69	10/31/09
3060–0250 ...	Secs. 73.1207, 74.784 and 74.1284	10/31/10
3060–0259 ...	Sec. 90.263	09/30/09
3060–0261 ...	Sec. 90.215	06/30/10
3060–0262 ...	Sec. 90.179	03/31/11
3060–0264 ...	Sec. 80.413	09/30/09
3060–0265 ...	Sec. 80.868	05/31/10
3060–0270 ...	Sec. 90.443	01/31/10
3060–0281 ...	Sec. 90.651	06/30/10
3060–0286 ...	Sec. 80.302	04/30/10
3060–0288 ...	Sec. 78.33	02/28/09
3060–0289 ...	Secs. 76.601, 76.1704, 76.1705, and 76.1717	06/30/11
3060–0290 ...	Sec. 90.517	04/30/11
3060–0291 ...	Sec. 90.477(a), (b)(2), (d)(2) and (d)(3)	06/30/11
3060–0292 ...	Part 69 (Sec. 69.605)	01/31/10
3060–0295 ...	Sec. 90.607(b)(1) and (c)(1)	04/30/10
3060–0297 ...	Sec. 80.503	09/30/09
3060–0298 ...	Part 61	07/31/11
3060–0307 ...	Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band.	01/31/10
3060–0308 ...	Sec. 90.505	04/30/10
3060–0310 ...	FCC 322	10/31/09
3060–0311 ...	Sec. 76.54	04/30/11
3060–0316 ...	Secs. 76.1700, 76.1702, 76.1703, 76.1704, 76.1707, and 76.1711	02/28/11
3060–0320 ...	Sec. 73.1350	03/31/10
3060–0325 ...	Sec. 80.605	09/30/11
3060–0329 ...	Sec. 2.955	01/31/09
3060–0331 ...	FCC 321	10/31/09
3060–0332 ...	Secs. 76.614 and 76.1706	11/30/10
3060–0340 ...	Sec. 73.51	01/31/10
3060–0341 ...	Sec. 73.1680	10/31/09
3060–0346 ...	Sec. 78.27	01/31/10

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3060–0347 ...	Sec. 97.311	01/31/09
3060–0349 ...	Secs. 73.2080, 76.73, 76.75, 76.79, and 76.1702	01/31/10
3060–0355 ...	FCC 492 and FCC 492A	07/31/10
3060–0357 ...	Sec. 63.701	06/30/11
3060–0360 ...	Sec. 80.409	11/30/10
3060–0370 ...	Part 32	04/30/11
3060–0384 ...	Secs. 64.904 and 64.905	01/31/11
3060–0386 ...	Sec. 73.1635	08/31/11
3060–0387 ...	Sec. 15.201(d)	09/30/09
3060–0390 ...	FCC 395–B	Pending OMB Approval.
3060–0391 ...	Parts 54 and 36, Program to Monitor the Impacts of the Universal Service Support Mechanisms	05/31/11
3060–0392 ...	47 CFR Part 1, Subpart J, Pole Attachment Complaint Procedures	01/31/10
3060–0394 ...	Sec. 1.420	06/30/11
3060–0395 ...	FCC Reports 43–02, FCC 43–05 and FCC 43–07	Pending OMB Approval.
3060–0398 ...	Secs. 2.948 and 15.117(g)(2)	08/31/09
3060–0400 ...	Tariff Review Plan	03/31/09
3060–0404 ...	FCC 350	02/28/11
3060–0407 ...	Sec. 73.3598	06/30/11
3060–0410 ...	FCC 495A and FCC 495B	Pending OMB Approval.
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3060–0433 ...	FCC 320	05/31/11
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3060–0436 ...	Equipment Authorization—Cordless Telephone Security Coding	06/30/09
3060–0439 ...	Sec. 64.201	10/31/10
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3060–0454 ...	Secs. 43.51, 64.1001, and 64.1002	08/31/11
3060–0463 ...	Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Declaratory Ruling, CG Docket No. 03–123, FCC 07–186.	07/31/11
3060–0466 ...	Secs. 73.1201, 74.783, and 74.1283	12/31/10
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3060–0496 ...	FCC Report 43–08	03/31/10
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3060–0501 ...	Secs. 73.1942, 76.206 and 76.1611	01/31/09
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3060–0508 ...	Part 1 and Part 22 Reporting and Recordkeeping Requirements	04/30/11
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3060–0519 ...	Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Order, CG Docket No. 02–278.	11/30/10
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3060–0546 ...	Sec. 76.59	03/31/09
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3060–0633 ...	Secs. 73.1230, 74.165, 74.432, 74.564, 74.664, 74.765, 74.832, and 74.1265	10/31/10
3060–0634 ...	Sec. 73.691	02/28/10
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3060–0667 ...	Secs. 76.630, 76.1621, and 76.1622	03/31/11
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3060–0687 ...	Access to Telecommunications Equipment and Services by Persons with Disabilities, CC Docket No. 87–124.	05/31/09
3060–0688 ...	FCC 1235	11/30/10
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3060–0692 ...	Home Wiring Provisions	03/31/10
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3060–0725 ...	Quarterly Filing of Nondiscrimination Reports (on Quality of Service, Installation, and Maintenance) by Bell Operating Companies (BOCs).	08/31/09
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3060–0737 ...	Disclosure Requirements for Information Services Provided Under a Presubscription or Comparable Arrangement.	06/30/09
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3060–0741 ...	Implementation of the Local Competition Provisions of the Telecommunications Act of 1996—CC Docket No. 96–98.	01/31/11
3060–0742 ...	Secs. 52.21, 52.22, 52.23, 52.24, 52.25, 52.26, 52.27, 52.28, 52.29, 52.30, 52.31, 52.32 and 52.33 and CC Docket No. 95–116.	11/30/08
3060–0743 ...	Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996—CC Docket No. 96–128.	01/31/10
3060–0745 ...	Implementation of the Local Exchange Carrier Tariff Streamlining Provisions of the Telecommunications Act of 1996, CC Docket No. 96–187.	11/30/09
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3060–0750 ...	Secs. 73.671 and 73.673	07/31/11
3060–0751 ...	Reports Concerning International Private Lines Interconnected to the U.S. Public Switched Network	01/31/09
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3060–0754 ...	FCC 398	06/30/09
3060–0755 ...	Secs. 59.1, 59.2, 59.3 and 59.4	03/31/09
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3060–0758 ...	Amendment of Part 5 of the Commission's Rules to Revise the Experimental Radio Service Regulations, ET Docket No. 96–256.	03/31/10
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3060–0767 ...	Sections 1.2110, 1.2111, and 1.2112, Auction Forms and License Transfer Disclosure Requirements	04/30/11
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3060–0770 ...	Price Cap Performance Review for Local Exchange Carriers—CC Docket No. 94–1 (New Services)	11/30/08
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3060–0774 ...	Parts 36 and 54, Federal-State Joint Board on Universal Service	04/30/11
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3060–0782 ...	Petition for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations.	11/30/09
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3060–0786 ...	Petitions for LATA Association Changes by Independent Telephone Companies	11/30/09
3060–0787 ...	Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance.	07/31/11
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3060–0793 ...	Federal-State Joint Board on Universal Service, Procedures for Self-Certifying as a Rural Carrier, CC Docket No. 96–45.	09/30/11
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3060–0799 ...	FCC 602	12/31/10
3060–0800 ...	FCC 603	01/31/11
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3060–0805 ...	Secs. 90.523, 90.527, 90.545 and 90.1211	07/31/11
3060–0806 ...	FCC 470 and FCC 471	01/31/11
3060–0807 ...	Sec. 51.803 and Supplemental Procedures for Petitions to Section 252(e)(5) of the Communications Act of 1934, as amended.	09/30/10
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3060–0814 ...	Sec. 54.301, Local Switching Support and Local Switching Support Data Collection Form and Instructions.	02/28/11
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3060–0817 ...	Computer III Further Remand Proceedings: BOC Provision of Enhanced Services (ONA Requirements), CC Docket No. 95–20.	09/30/09
3060–0819 ...	Secs. 54.400, 54.401, 54.402, 54.403, 54.404, 54.405, 54.406, 54.407, 54.408, 54.409. 54.410, 54.411, 54.412, 54.413, 54.414, 54.415, 54.416 and 54.417, and FCC 497.	07/31/11
3060–0823 ...	Part 64, Pay Telephone Reclassification	06/30/11
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3060–0833 ...	Implementation of Section 255 of the Telecommunications Act of 1996: Complaint Filings	04/30/11
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3060–0849 ...	Commercial Availability of Navigation Devices, CS Docket No. 97–80	06/30/10
3060–0850 ...	FCC 605	04/30/11
3060–0853 ...	FCC 479, FCC 486, and FCC 500	04/30/10
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3060–0865 ...	Wireless Telecommunications Bureau Universal Licensing System Recordkeeping and Third-Party Disclosure Requirements.	07/31/10
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3060–0876 ...	Sec. 54.703 and Secs. 54.719, 54.720, 54.721, 54.722, 54.723, 54.724 and 54.725	09/30/09
3060–0881 ...	Sec. 95.861	08/31/11
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3060–0888 ...	Secs. 76.7, 76.9, 76.61, 76.914, 76.1003, 76.1302, and 76.1513	02/28/11
3060–0894 ...	Secs. 54.313 and 54.316 and Certification Letter Accounting for Receipt of Federal Support and Rate Comparability Review and Certification.	09/30/10
3060–0895 ...	FCC 502	05/31/10
3060–0896 ...	Broadcast Auction Form Exhibits	12/31/08
3060–0900 ...	Compatibility of Wireless Services with Enhanced 911—CC Docket No. 94–102	02/28/09
3060–0901 ...	Reports of Common Carriers and Affiliates	04/30/09
3060–0905 ...	Secs. 18.213 and 18.307	11/30/08
3060–0906 ...	FCC 317	05/31/09
3060–0910 ...	Third Report and Order in CC Docket No. 94–102 to Ensure Compatibility with Enhanced 911 Emergency Calling Systems.	09/30/09
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3060–0918 ...	FCC 161	03/31/10
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3060–0921 ...	Petitions for LATA Boundary Modification for the Deployment of Advanced Services	09/30/09
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3060–0927 ...	Auditor's Annual Independence and Objectivity Certification	04/30/09
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3060–0931 ...	Maritime Mobile Services Identity (MMSI)	06/30/09
3060–0932 ...	FCC 301–CA	02/28/11
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3060–0942 ...	Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service.	03/31/10
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3060–0944 ...	Review of Commission Consideration of Applications Under the Cable Landing License Act	03/31/09
3060–0949 ...	FCC 159–W	03/31/10
3060–0950 ...	Bidding Credits for Tribal Lands, WT Docket No. 99–266	09/30/10
3060–0951 ...	Sec. 1.1204(b) Note, and Sec. 1.1206(a) Note 1	01/31/10
3060–0952 ...	Proposed Demographic Information and Notifications, CC Docket Nos. 98–147 and 96–98	01/31/10
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3060–1038 ...	Digital Television Transition Information Questionnaires	01/31/10
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3060–1040 ...	Broadcast Ownership Rules, Report and Order in MB Docket No. 02–777 and MM Docket Nos. 02–235, 02–327, and 00–244.	02/28/10
3060–1041 ...	Remedial Measures for Failure to Construct Digital Television Stations (DTV Policy Statement)	06/30/09
3060–1042 ...	Request for Technical Support—Help Request Form	11/30/10
3060–1043 ...	Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67.	03/31/11
3060–1044 ...	Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01–338, and WC Docket No. 04–313, FCC 04–290, Order on Remand.	03/31/10
3060–1045 ...	FCC 324	11/30/09
3060–1046 ...	Part 64, Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996.	06/30/11
3060–1047 ...	Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order, CG Docket Nos. 03–123, FCC 05–203.	02/28/09
3060–1048 ...	Sec. 1.929(c)(1)	03/31/10
3060–1050 ...	Sec. 97.303	11/30/10
3060–1053 ...	Sec. 64.604, Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Two-Line Captioned Telephone Order,....	05/31/10
3060–1054 ...	FCC 422–IB	02/28/10
3060–1055 ...	FCC 423–IB	02/28/10
3060–1056 ...	FCC 421–IB	02/28/10
3060–1057 ...	FCC 420–IB	02/28/10
3060–1058 ...	FCC 608	01/31/11
3060–1059 ...	Global Mobile Personal Communications by Satellite (GMPCS)/E911 Call Centers	01/31/11
3060–1060 ...	Wireless E911 Coordination Initiative Letter	10/31/10
3060–1061 ...	Earth Stations on Board Vessels (ESVs)	04/30/11
3060–1062 ...	Schools and Libraries Universal Service Support Mechanism—Notification of Equipment Transfers	07/31/10
3060–1063 ...	Global Mobile Personal Communications by Satellite (GMPCS) Authorization, Marketing and Importation Rules.	03/31/10
3060–1064 ...	Regulatory Fee Assessment True-Ups	06/30/11
3060–1065 ...	Sec. 25.701	06/30/10
3060–1066 ...	FCC 312–R	03/31/10
3060–1067 ...	FCC 312–EZ	05/31/10
3060–1069 ...	Rules and Policies Concerning Attribution of Joint Sales Agreements in Local Television Markets, NPRM, MB Docket No. 94–246, FCC 04–173.	08/31/10
3060–1070 ...	Allocations and Service Rules for the 71–76 GHz, 81–86 GHz, and 92–95 GHz Bands	12/31/08
3060–1078 ...	Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM Act), CG Docket No. 04–53.	11/30/10
3060–1079 ...	Sec. 15.240, Radio Frequency Identification Equipment (RFID)	02/28/11
3060–1080 ...	Collections for the Prevention or Elimination of Interference and for the Reconfiguration of the 800 MHz Band.	08/31/11
3060–1081 ...	Federal-State Joint Board on Universal Service, CC Docket No. 96–45	10/31/08
3060–1083 ...	Secs. 64.1300 through 64.1340	06/30/11

OMB control No.	FCC form number or 47 CFR section or part, docket number or title identifying the collection	OMB expiration date
3060–1084 ...	Rules and Regulations Implementing Minimum Customer Account Record Obligations on All Local and Interexchange Carriers (CARE), CG Docket No. 02–386.	06/30/10
3060–1085 ...	Collection of Location Information, Provision of Notice and Reporting on Interconnected Voice Over Internet Protocol (VoIP) E911 Compliance.	01/31/09
3060–1086 ...	Secs. 74.786, 74.787, 74.790, 74.794 and 74.796	07/31/11
3060–1087 ...	Section 15.615, Broadband Over Power Lines (BPL)	07/31/11
3060–1088 ...	FCC 1088 Series	03/31/10
3060–1089 ...	Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Emergency Access Notice of Proposed Rulemaking and IP Relay/VRS Fraud.....	10/31/10
3060–1092 ...	FCC 609–T and FCC 611–T	01/31/11
3060–1094 ...	Licensing, Operation, and Transition of the 2500–2690 MHz Band	10/31/09
3060–1095 ...	Surrenders of Authorization for International Carrier, Space Station and Earth Station Licensees	12/31/09
3060–1096 ...	Prepaid Calling Card Service Provider Certification, WC Docket No. 05–68	02/28/10
3060–1098 ...	Rural Health Care Support Mechanism	03/31/10
3060–1100 ...	Sec. 15.117	09/30/10
3060–1101 ...	Children's Television Requests for Preemption Flexibility	06/30/10
3060–1103 ...	Sec. 76.41	07/31/10
3060–1104 ...	Sec. 83.682(d)	03/31/11
3060–1105 ...	Digital TV Transition Report	06/30/11
3060–1108 ...	Consummations of Assignments and Transfers of Control Authorization	09/30/10
3060–1110 ...	Sunset of the Cellular Radiotelephone Service Analog Service Requirement and Related Matters, MO&O, FCC 07–103.	10/31/10
3060–1111 ...	Sections 225 and 255, Interconnected Voice Over Internet Protocol (VoIP) Services	01/31/11
3060–1112 ...	Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight	01/31/11
3060–1114 ...	Information Needed in Requests for Waiver of June 26, 2008 Deadline for Rebanding Completion	09/30/08
3060–1115 ...	Secs. 15.124, 27.20, 54.418, 73.674, and 76.1630	Pending OMB Approval.
3060–1116 ...	Submarine Cable Reporting	10/31/08
3060–1117 ...	Viewer Notification Requirements in the Third DTV Periodic Report and Order, FCC 07–228	Pending OMB Approval.
3060–1118 ...	DTV Retailer Site Visit Program	12/31/08
3060–1119 ...	Section 12.3, Information Collection Regarding Redundancy, Resiliency and Reliability of 911 and E911 Networks and/or Systems as Set Forth in the Commission's Rules.	08/31/11
3060–XXXX	Service Quality Measurement Plan for Interstate Special Access and Monthly Useage Reporting Requirements (272 Sunset Rulemaking).	Pending OMB Approval.

[FR Doc. E8–23261 Filed 10–2–08; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2032; MB Docket No. 08–118; RM–11455]

Television Broadcasting Services; Shreveport, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Louisiana Educational Authority, licensee of KLTS–DT, to substitute DTV channel *24 for DTV channel *25 at Shreveport, Louisiana.

DATES: The channel substitution is effective October 20, 2008.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–118, adopted September 2, 2008, and released September 3, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622(i) [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Louisiana, is amended by adding channel *24 and removing channel *25 at Shreveport.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–23151 Filed 10–2–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2066; MB Docket No. 08–144; RM–11472]

Television Broadcasting Services; Salt Lake City, UT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by FoxCo Acquisition Sub, LLC, licensee of KSTU–DT, to substitute DTV channel 28 for DTV channel 13 at Salt Lake City, Utah.

DATES: The channel substitution is effective November 3, 2008.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–144, adopted September 3, 2008, and released September 10, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act 0f 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622(i) [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Utah, is amended by adding channel 28 and removing channel 13 at Salt Lake City.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–23156 Filed 10–2–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2065; MB Docket No. 08–112; RM–11456]

Television Broadcasting Services; Longview, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Estes Broadcasting, Inc., permittee of KCEB–DT, to substitute DTV channel 51 for DTV channel 38 at Longview, Texas.

DATES: The channel substitution is effective November 3, 2008.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–112, adopted September 9, 2008, and released September 12, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622(i) [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Texas, is amended by adding channel 51 and removing channel 38 at Longview.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–23155 Filed 10–2–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XK85

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel by Vessels in the Amendment 80 Limited Access Fishery in the Western Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel by vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2008 Atka mackerel allowable catch (TAC) specified for vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 30, 2008, through 2400 hrs, A.l.t., December 31, 2008.

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

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

The 2008 Atka mackerel TAC allocated to vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the BSAI is 9,298 metric tons (mt) as established by the 2008 and 2009 final harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008), reallocation (73 FR 44173, July 30, 2008), and correction (73 FR 47559, August 14, 2008).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2008 Atka mackerel TAC allocated to vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 9,288 mt and is setting aside the remaining 10 mt as incidental catch to support other groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel by vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Atka mackerel by vessels participating in the Amendment 80 limited access fishery in the Western Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 29, 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.

This action is required by § 679.20 and § 679.91 and is exempt from review under Executive Order 12866.

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

Dated: September 30, 2008.

Alan D. Risenhoover

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

[FR Doc. E8–23380 Filed 9–30–08; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 193
Friday, October 3, 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 COMMERCE

Bureau of Industry and Security

15 CFR Parts 740 and 772

[Docket No. 071213838–81132–01]

RIN 0694–AE21

Export Administration Regulations: Establishment of License Exception Intra-Company Transfer (ICT)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Export Administration Regulations (EAR) to establish a new license exception entitled ''Intra-Company Transfer (ICT).'' This license exception would allow an approved parent company and its approved wholly-owned or controlled in fact entities to export, reexport, or transfer (in-country) many items on the Commerce Control List (CCL) among themselves for internal company use. Prior authorization from the Bureau of Industry and Security (BIS) would be required to use this license exception. This rule describes the criteria pursuant to which entities would be eligible to use License Exception ICT and the procedure by which they must apply for such authorization. This proposed rule is one of the initiatives in the export control directive announced by the President on January 22, 2008.

DATES: Comments must be received by November 17, 2008.

ADDRESSES: You may submit comments, identified by RIN 0694–AE21, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: rpd2@bis.doc.gov.* Include ''RIN 0694–AE21'' in the subject line of the message.
- *Fax:* 202–482–3355
- *Mail/Hand Delivery:* Steven Emme, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694–AE21.

FOR FURTHER INFORMATION CONTACT: Steven Emme, Regulatory Policy Division; Telephone: 202–482–2440; E-mail: *semme@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Presidential Directives on U.S. Export Control Reform and Deemed Export Advisory Committee

On January 22, 2008, the President announced a package of directives to ensure that the export control policies and practices of the United States support the National Security Strategy of 2006, while facilitating the United States' continued international economic and technological leadership. These directives focus the export control system to meet the unprecedented security challenges as well as the economic challenges faced by the United States, due to the increasing worldwide diffusion of high technology and impact of global markets.

The directives recognize that the economic and technological competitiveness of the United States is essential to meet long-term national security interests. Export controls must, therefore, cover the export and reexport of sensitive items without unduly burdening U.S. economic competitiveness and innovation. This is particularly critical in light of the current and increasing globalization of research, development, and production, as well as the rise of new economic competitors and the diffusion of global supply networks that challenge U.S. economic and technological competitiveness.

Shortly before the President announced the package of directives on U.S. export control reforms, the Deemed Export Advisory Committee (DEAC) presented its findings to the Secretary of Commerce on deemed export controls. The DEAC, a federal advisory committee established by the Secretary, undertook a comprehensive examination of the national security, technology, and competitiveness aspects of the deemed export rule. A deemed export is the release of technology and source code subject to the EAR to foreign nationals in the United States that is ''deemed'' to be an export to the home country or countries of the foreign national. In its final report, which was issued in December 2007, the DEAC concluded that the deemed export rule ''no longer effectively serves its intended purpose and should be replaced with an approach that better reflects the realities of today's national security needs and global economy.'' In order to address this concern, the DEAC made several recommendations, including creating a category of ''Trusted Entities'' that voluntarily elect to qualify for streamlined treatment after meeting certain criteria. Further, the DEAC recommended that these ''Trusted Entities'' include subsidiaries abroad so that individuals and ideas could move within the company structure without the need for separate deemed export licenses.

It is in the context of the President's directives on U.S. export control reforms and with respect to the DEAC's recommendations on deemed export controls that BIS is proposing this rule creating a license exception for intra-company transfers.

The Impact of U.S. Export Controls on Intra-Company Transfers

As global markets and manufacturing continue to evolve, many parent companies have numerous operations in multiple countries for distribution, service and repair, manufacturing and development, product testing, and other uses. In this environment, parent companies increasingly export commodities, software, and technology to their foreign branches, subsidiaries, and/or ultimate foreign parent companies around the world. Consequently, many companies may need multiple export licenses from BIS under a variety of scenarios for their own internal operations. For example, to conduct day-to-day operations, many companies in the United States must export commodities, software, and technology to their foreign branches and subsidiaries, resulting in the need for export licenses. In addition, companies may also require reexport licenses to transfer items among their foreign branches, foreign subsidiaries, and/or their ultimate foreign parent companies, located in multiple countries. On occasion, a company will have several branches or subsidiaries within the same foreign country and must then seek authorization to make in-country

transfers of technology and other items between those entities. Finally, releasing technology and source code subject to the EAR to foreign national employees at locations of the company in the United States or at the location of another foreign branch or subsidiary could generate the need for deemed export or deemed reexport licenses.

Generally, obtaining these licenses for intra-company transfers can negatively impact transactions due to the delay involved in waiting for a licensing decision. Moreover, obtaining licenses for intra-company transfers can hinder more than just individual transactions; they can also hinder product development and the ability to be first to market—activities key to the competitiveness of U.S. companies. For many companies, product development entails large capital investments, compressed product cycles, and intensive coordination of research and development. With the current licensing requirements in place, however, many companies with U.S. operations may be forced to segregate their research and development activities. For instance, while waiting for the approval of a deemed export license, U.S. employees and certain foreign national employees would be precluded from collaborating together on projects. Furthermore, once the license is approved, companies may still need to segregate their research and development activities in the future because product breakthroughs could exceed the licensing parameters and require a new round of export licensing.

Establishment of License Exception ICT

In order to facilitate secure exports, reexports, and in-country transfers to, from, and among a parent company and its wholly-owned or controlled in fact entities, the Bureau of Industry and Security is proposing to amend the Export Administration Regulations (EAR) to create License Exception Intra-Company Transfer (ICT). License Exception ICT, which would be set forth in new § 740.19 of the EAR, would provide companies a process for intra-company exports, reexports, and in-country transfers without individual licenses. This license exception would allow parent companies and the entities that the parent company wholly owns or controls in fact to export, reexport, and transfer (in-country) many items on the Commerce Control List (CCL) among themselves for internal company use. The grant of ICT would be restricted to those approved companies and those Export Control Classification Numbers (ECCNs) that are authorized by BIS.

Companies authorized to use License Exception ICT would benefit because it would relieve them of some of the administrative requirements of obtaining, tracking, and reporting on individual licenses and would reduce the lag time, expense, and uncertainty in the licensing process. This license exception would also improve research and development and other internal company activities, thus leading to improved competitiveness and innovation for companies with operations in the United States.

In proposing this license exception for intra-company exports, reexports, and in-country transfers, BIS recognizes that industry and government share the goal of protecting controlled commodities, software, and technology, since these often represent proprietary information and property. Moreover, BIS also recognizes that many companies devote considerable financial and workforce resources to ensuring compliance with export controls. BIS would authorize License Exception ICT for those companies that demonstrate effective internal control plans, submit annual reports on their use of ICT, and agree to audits by BIS officials as requested.

By authorizing this license exception for companies that have effective internal control plans and have agreed to audits, BIS can focus its resources on evaluating transactions involving lesser-known items and entities to better prevent exports to persons who may act contrary to U.S. national security and foreign policy interests. Greater focus on such transactions would increase the national security value of the remaining reviews of individual license applications.

Definitions

For purposes of this rule, BIS is defining multiple terms used with respect to License Exception ICT. These terms are ''controlled in fact,'' ''employee,'' and ''parent company.'' This rule would amend § 772.1 of the EAR to include these new definitions as described below.

First, BIS is amending the definition of ''controlled in fact'' in § 772.1 by applying aspects of the definition of the same term set forth in § 760.1(c) of the EAR to specify the circumstances in which one entity will be presumed to have control over another entity for purposes of License Exception ICT. In order to include any entity in its application to use License Exception ICT, the parent company must either wholly own or control in fact that individual entity.

Next, BIS is amending § 772.1 to add the term ''employee,'' for purposes of License Exception ICT, to refer to persons who work, with or without compensation, in the interest of an entity that is an approved eligible user or an approved eligible recipient of ICT. Such persons must work at the approved eligible entity's locations, including overseas locations, or at locations assigned by the approved eligible entity, such as at remote sites or on business trips. This definition may include permanent employees, contractors, and interns.

Finally, BIS is amending § 772.1 to add the term ''parent company,'' which will be defined for purposes of License Exception ICT, to mean any entity that wholly owns or controls in fact a different entity, such as a subsidiary or branch. The parent company does not have to be an ultimate parent company, as that term is referred to in the definition of parent company; it may be wholly-owned or controlled by another entity or other entities. Also, the parent company does not need to be incorporated in or have its principal place of business in the United States. However, in order to be eligible for and use License Exception ICT, the parent company must be incorporated in or have its principal place of business in a country listed in Supplement No. 4 to part 740 (see new § 740.19(b)(1)). This definition does not include colleges and universities. Thus, the research conducted by colleges and universities that is not fundamental research (see § 734.8(a) of the EAR) and that requires a license would not qualify for License Exception ICT. However, a university professor who enters into a contractual relationship with a company to conduct proprietary research could qualify as an ''employee'' if all conditions in that definition are met.

Information Required for Submission to BIS for Review to Use License Exception ICT

In order to avail themselves of License Exception ICT, a ''parent company'' and the entities that it wholly owns or ''controls in fact'' must maintain an internal control plan, hereinafter referred to as an ICT control plan. Upon implementation of the ICT control plan, the parent company, as the eligible applicant under new § 740.19(b)(1), must submit the plan to BIS for review pursuant to new § 740.19(e). Additionally, the eligible applicant must submit documentation showing that the ICT control plan has been implemented. Such documentation should include a representative sample of records showing effective compliance with the screening, training, and self-evaluation elements of the ICT control plan, as described below in further detail.

Along with the ICT control plan and supporting documentation, the eligible applicant parent company must list the wholly-owned entities and controlled in fact entities that the applicant parent company intends to be eligible users (see new § 740.19(b)(2)) or eligible recipients (see new § 740.19(b)(3)(i)) of this license exception. It is possible for an entity to be both an eligible user and an eligible recipient. For itself, and for each eligible user and eligible recipient entity, the eligible applicant parent company must list any individual or group that has at least a 10% ownership interest. Finally, the eligible applicant parent company must list the ECCNs of the items it plans to export, reexport, or transfer (in-country) under ICT; provide a narrative describing the purpose for which the requested ECCNs will be used and the anticipated resulting commodities, if applicable; disclose its relationship with each entity that is intended to be an eligible user and/or eligible recipient; and provide a signed statement by a company officer of the eligible applicant parent company stating that each entity will allow BIS to conduct audits on the use of License Exception ICT.

ICT Control Plan

An ICT control plan seeks to ensure that items on the Commerce Control List will not be exported, reexported, or transferred in violation of this license exception. As this license exception may be used for commodities, software, and technology, the ICT control plan must address how the parent company and the entities that it wholly owns or controls in fact, as eligible users and eligible recipients, will maintain items authorized for export, reexport, or transfer by this license exception within the company structure, as authorized by BIS.

Within the ICT control plan, eligible applicants must describe how certain mandatory elements will be met. These mandatory elements, which are listed in new § 740.19(d)(1), include corporate commitment to export compliance, a physical security plan, an information security plan, personnel screening procedures, a training and awareness program, a self-evaluation program, a letter of assurance for software and technology, non-disclosure agreements, and end-user list reviews. All of these elements are aspects of export control compliance programs that establish effective internal control plans. In turn, these internal control plans generate an increased level of awareness of export control compliance issues among employees and help secure a company's proprietary information.

For the required ICT control plan elements in paragraphs (d)(1)(i) through (d)(1)(vi) of new § 740.19, BIS is not specifying how each company must achieve them due to the varying characteristics of companies. However, paragraphs (d)(1)(i) through (d)(1)(vi) do contain illustrative examples of evidence that a company may use in its descriptions detailing how it will implement those mandatory elements. While companies may include additional elements in their ICT control plan, they must, at a minimum, describe how the minimum mandatory elements set forth in § 740.19(d)(1) will be met. One mandatory element—the self-evaluation program in paragraph (d)(1)(vi)—requires the creation and performance of regular internal self-audits, creation of a checklist of critical areas and items to review, and development of corrective procedures or measures implemented to correct identified deficiencies. If any identified deficiencies rise to the level of a violation of the EAR, the company should make a voluntary self-disclosure pursuant to § 764.5.

If a company plans to use this license exception for commodities only, then the company may state in the ICT control plan that the mandatory elements of the ICT control plan set forth in paragraphs (d)(1)(iii) (information security plan), (d)(1)(iv) (personnel screening procedures), (d)(1)(vii) (letter of assurance for software and technology), (d)(1)(viii) (signing of non-disclosure agreements), and (d)(1)(ix) (review of end-user lists) are not applicable because the license exception will be used for commodities only and not used for software or technology. Similarly, if a company plans to use this license exception for software (excluding source code) only, or if a company plans to use this license exception for commodities and software (excluding source code) only, then the company may state in the ICT control plan that the mandatory elements found in paragraphs (d)(1)(iv) (personnel screening procedures), (d)(1)(viii) (signing of non-disclosure agreements), and (d)(1)(ix) (review of end-user lists) are not applicable because the license exception will be used for software (excluding source code) only, or, if appropriate, for software (excluding source code) and commodities only, and not used for technology or source code.

Mandatory Requirements for Technology and Source Code Under an ICT Control Plan

Entities that seek to be approved eligible users and/or eligible recipients of this license exception must ensure that non-U.S. national employees, wherever located, sign non-disclosure agreements before receiving technology or source code under this license exception. Such non-disclosure agreements must state that the employee agrees not to release any technology or source code in violation of the EAR, and such agreements must be binding as long as the technology or source code remains subject to export controls, regardless of the signatory's employment relationship with the employer. In other words, even if the signatory's employment relationship with the employer were severed, the signatory would remain prohibited from releasing any technology or source code received under License Exception ICT while employed. The non-disclosure agreement must also specify that the prohibition would remain in effect until the technology or source code no longer required a license to any destination under the EAR.

In addition, entities that seek to be approved eligible users and/or eligible recipients of ICT must screen non-U.S. national employees who are also foreign national employees in the country in which they are working against lists of end-user concern. This screening requirement applies if such individuals are to receive technology or source code under ICT. The lists of end-users of concern are compiled by the U.S. government and may be accessed at the BIS Web site at *http://www.bis.doc.gov*. Upon publication of a final rule, BIS plans to provide guidance on its website with respect to screening such employees for purposes of ICT.

Non-U.S. national employees are those employees who are not U.S. citizens, U.S. permanent residents, or protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). Foreign national employees are those non-U.S. national employees, wherever located, who are not citizens or legal permanent residents of the country in which they work. For instance, a German national working in the United States and a German national working in France are both considered foreign national employees for purposes of this rule (and more generally for purposes of the EAR). However, a French national working in France is not a foreign national employee from the perspective of BIS. Therefore, all foreign national employees are non-U.S. national employees, but not all non-U.S. national employees are foreign national employees. This distinction is important because the non-disclosure agreement element in an ICT control plan applies to the German national working in France as well as to the French national

working in France. Thus, it applies to non-U.S. national employees who would otherwise be permitted to receive technology or source code subject to the EAR, if not for the grant of ICT, under a deemed export license, deemed reexport license, license to a facility where the employee works, or other license exception.

Unlike the non-disclosure agreement requirement, the screening element applies only to foreign national employees. Hence, it would apply to a German national working in France but not to a French national working in France. The release of technology or source code subject to the EAR to a foreign national employee may occur under a deemed export or deemed reexport license or by operation of a license exception, but it may also occur under a license that has been issued to a facility. For example, a technology license approved for a French facility may have a condition allowing all EU nationals to receive the technology as well as the French employees. The screening requirement is intended to apply to all foreign national employees receiving technology or source code under ICT that would otherwise require a license, whether it be through a license for a deemed export or deemed reexport, a license issued to a facility, or other license exception.

Additionally, foreign national employees of companies located in the United States must comply with U.S. immigration laws and maintain current and valid visa authorization.

Authorization From BIS to Use License Exception ICT

Following receipt of the ICT control plan and all information required under new § 740.19(e)(1), BIS will review and refer the submission to the reviewing agencies consistent with §§ 750.3 and 750.4 of the EAR and Executive Order 12981, as amended by Executive Orders 13020, 13026, and 13117. In order to determine ICT eligibility, BIS will consider prior licensing history of the eligible applicant parent company and its wholly-owned or controlled in fact entities that are part of the authorization request, demonstration of an effective ICT control plan, need for this license exception within the company structure as articulated by the applicant parent company, and relationship of the wholly-owned or controlled in fact entities to the eligible applicant parent company.

Upon reaching a decision, BIS will inform the eligible applicant parent company in writing if it may use this license exception pursuant to new § 740.19(f). BIS will specify the terms of the ICT authorization, including identifying the wholly-owned or controlled in fact entities of the eligible applicant parent company that may use ICT and the ECCNs of the items that may be exported, reexported, or transferred (in-country) for internal company use under ICT. After receiving authorization, approved parent companies and their approved wholly-owned or controlled in fact entities, if covered under the ICT control plan, may use this license exception to export, reexport, or transfer (in-country) approved commodities, software, and/or technology among themselves for internal company use only. Any entity that seeks to become an eligible user and/or eligible recipient, as described in new §§ 740.19(b)(2) and 740.19(b)(3)(i), must be specifically covered by the ICT control plan submitted to BIS and maintain the ICT control plan of the eligible applicant parent company.

Exports, reexports, and in-country transfers for any purpose other than internal company use are not authorized under License Exception ICT. With respect to an item that has been exported, reexported, or transferred (in-country) pursuant to License Exception ICT, the entity must submit a license application if required under the EAR before using the item for a purpose other than that covered by this license exception. Also, should control of the approved eligible applicant parent company change, then use of License Exception ICT is no longer valid. The newly-controlled eligible applicant parent company must re-submit the information required for ICT authorization, as described in new § 740.19(g)(3).

Annual Reporting Requirements

After submitting a request for authorization to use License Exception ICT pursuant to new § 740.19(e) and after receiving approval from BIS, approved eligible applicant parent companies must submit an annual report to BIS on the use of this license exception by itself and by its approved wholly-owned or controlled in fact entities. Specifically, approved eligible applicant parent companies must list the name, nationality, and date of birth of each foreign national employee, as described in note 2 to new § 740.19(b)(3)(ii), who has received technology or source code under this license exception. The requirement is limited to those employees, who would have required a license to receive technology or source code if not for ICT, and who are not citizens or legal permanent residents of the country in which they are employed. Therefore, it applies to foreign national employees working in the United States and to foreign national employees working outside of the United States.

Also, approved eligible applicant parent companies must submit the names of those foreign national employees, as described in note 2 to new § 740.19(b)(3)(ii), who previously received technology or source code under this license exception and have ended their employment. This requirement does not apply to those who have merely switched positions within the company structure of the parent company, so long as the new employer is an approved eligible entity under the same parent company. BIS is requesting this information in order to examine the use of License Exception ICT and measure its effectiveness. Further, a company officer must certify to BIS that the approved eligible applicant parent company and its approved eligible users and eligible recipient entities are in compliance with the terms and conditions of ICT. This certification should include the results of the self-evaluation described in paragraph (d)(1)(vi) of this section.

Auditing Use of License Exception ICT

BIS will conduct audits of approved eligible applicant parent companies and their approved wholly-owned or controlled in fact entities to ensure proper compliance with License Exception ICT. These reviews will take place approximately once every two years. Generally, BIS will give notice to the relevant parties before conducting an audit. However, if BIS has reason to believe that an entity is improperly using ICT, BIS may conduct an unannounced audit at its discretion that is separate from the biennial audit.

Restrictions on the Use of License Exception ICT and the Direct Product Rule

Consistent with other license exceptions, License Exception ICT is subject to the restrictions on the use of all license exceptions, which are set forth in § 740.2 of the EAR. Therefore, ICT cannot be used for certain items, such as items controlled for missile technology reasons or certain items that are ''space qualified.'' Moreover, ICT is subject to revision, suspension, or revocation, in whole or in part, without notice.

Also, new § 740.19(c) lists restrictions on using ICT. For instance, items controlled for Encryption Items (EI) reasons and items controlled for Significant Items (SI) reasons are ineligible for export, reexport, or transfer (in-country) under ICT. At this

time, License Exception ENC will remain the primary resource for providing the authorization necessary for many intra-company transfers of encryption items. Further, no items exported, reexported, or transferred within country under this license exception may be subsequently exported, reexported, or transferred for purposes other than internal company use, unless done so in accordance with the EAR. However, items that have been exported, reexported, or transferred (in-country) under License Exception ICT may not be subsequently exported, reexported, or transferred (in-country) under License Exception APR (see § 740.16).

Finally, note that whether the foreign direct product of U.S. software or technology exported from abroad, reexported, or transferred under License Exception ICT is subject to the EAR is determined under § 736.2(b)(3) of the EAR, when the foreign direct product is exported from abroad, reexported, or transferred (in-country) for other than internal use within a Country Group D:1 country or Cuba.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of July 23, 2008, 73 FR 43603 (July 25, 2008), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This proposed rule contains a collection previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. In addition, this proposed rule contains a new collection for reporting, recordkeeping, and auditing requirements, which would be submitted for approval to use License Exception ICT, carries an estimated burden of 19.6 hours for companies having an existing internal control plan and 265.6 hours for companies not having an existing internal control plan in place. A request for new collection authority will be submitted to OMB for approval. Public comment will be sought regarding the burden of the collection of information associated with preparation and submission of these proposed voluntary requirements. BIS estimates that this rule will reduce the number of multi-purpose application forms that must be filed by 582 annually. Send comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this proposed rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulations, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities for the reasons explained below. Consequently, BIS has not prepared a regulatory flexibility analysis.

The EAR applies to all entities that export, reexport, or transfer commodities, software, and technology that are subject to the EAR. The EAR potentially affects any entity in any sector that chooses to export, reexport, or transfer items subject to the EAR. Thus, while this proposed rule could potentially have a significant economic impact on small entities, BIS believes that this proposed rule will not impact a substantial number of small entities.

BIS does not have data on the total number of small entities that are potentially impacted by the requirements of the EAR, but BIS does maintain data on actual licenses applied for by entities of all sizes. In order to examine the number of small entities that would be impacted by this proposed rule, BIS examined the licensing data to find approved licenses that would potentially qualify as an intra-company transfer. Using this data as well as using estimated burden hours in gaining ICT authorization, BIS conducted a cost-benefit analysis to see which entities would likely choose to apply for authorization. BIS also examined all approved licenses that could qualify as intra-company transfers to determine whether any entities were small entities.

Upon initial examination of licensing data from 2004 to 2006, BIS found that approximately 200 companies had licenses approved that could potentially qualify as an intra-company transfer. Of those companies, the vast majority consisted of large parent companies, medium-sized companies, or companies that were owned by larger domestic or foreign companies. This result supports the premise that entities that would avail themselves of ICT must be large enough to have subsidiaries or branches located in different countries that the entities control in fact.

To look at which of those approximately 200 companies would most likely choose to apply for ICT authorization, BIS conducted a cost-benefit analysis by estimating the burden hours involved in gaining ICT authorization as well as with complying with recordkeeping and reporting requirements under ICT. BIS determined that over a three-year period it would take 280.8 hours (or 16,848 minutes) for a company without an internal control program to seek ICT authorization and 34.8 hours (or 2088 minutes) for a company with an existing internal control program to seek ICT authorization. The threshold by which companies would likely be inclined to apply for authorization to use ICT is the point at which the burden of applying for licenses over a three-year period (at 70 minutes per license) exceeds the total ICT burden hours over three years (at 16,848 minutes for companies without an existing internal control program or at 2088 minutes for companies with an internal control program). In order to meet that threshold, companies without an internal control program would have to apply for about 241 licenses over a three-year period, and companies with

an existing internal control program would have to apply for about 30 licenses per year over a three-year period. Only two companies meet the 241 license threshold, and those companies are not small entities under the North American Industry Classification System (NAICS) standards. Sixteen companies meet the 30 license threshold or come close (within five licenses) of meeting the threshold, and none of those companies is a small entity under the NAICS standards. In addition to burden hours, companies without an existing internal compliance program may be less likely to choose to seek ICT authorization because additional investments would likely need to be made to implement an internal control program. While these upfront investments could greatly vary depending on company size as well as the type and number of items in the company portfolio, it is likely that companies would need to invest in physical and information security as well as incur travel expenses to visit overseas facilities to ensure that the internal compliance program is operating effectively. All of these additional costs would likely increase the burden in any cost-benefit analysis and would likely make an entity of any size that does not have an internal compliance program less likely to seek ICT authorization and thus not be impacted by this proposed rule.

Even if an entity without an internal compliance program utilizes a different cost-benefit analysis and decides to apply for ICT authorization, BIS licensing data shows that the potential ICT candidate would not be a small entity. Only four companies, for which public information was available, were found to qualify as small entities under the NAICS. However, the potential intra-company licenses approved for these four entities would all be ineligible under License Exception ICT. The items approved for export were all items listed under § 740.2 that are restricted for export, reexport, or in-country transfer under all license exceptions. Therefore, no small entity was found to have licenses that were approved by BIS over a three-year period that would qualify under ICT. Consequently, this proposed rule would not affect a significant number of small entities.

This proposed rule was mandated by the President in National Security Presidential Directive (NSPD) 55. While this proposed rule will increase burden hours for those entities choosing to seek authorization for License Exception ICT, BIS licensing data and publicly available information show that no small entities in the period of review received approved licenses for intra-company transfers that would be eligible for License Exception ICT. Thus, a substantial number of small entities will not be impacted by this proposed rule.

List of Subjects

15 CFR Part 740

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

15 CFR Part 772

Exports.

For the reasons set forth in the preamble, parts 740 and 772 of the Export Administration Regulations (15 CFR 730–774) are amended as follows:

PART 740—[AMENDED]

1. The authority citation for 15 CFR part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

2. Section 740.19 is added to read as follows:

§ 740.19 Intra-Company Transfer (ICT).

(a) *Scope.* This license exception authorizes exports, reexports, and in-country transfers of items on the Commerce Control List for internal company use among approved eligible applicants, eligible users, and eligible recipients, as described in paragraphs (b)(1), (b)(2), and (b)(3) respectively, of this section. Use of License Exception ICT is limited to those entities and those ECCNs that are authorized by BIS, pursuant to paragraph (f) of this section.

(b) *Eligibility.*

(1) *Eligible applicant.* The eligible applicant is the ''parent company,'' as that term is defined in section 772.1, that institutes an ICT control plan, as described in paragraph (d) of this section, and that applies for authorization from BIS to use this license exception. The eligible applicant must be incorporated in or have its principal place of business in any country listed in Supplement No. 4 to part 740. In addition, the eligible applicant may be, but is not required to be, the ultimate parent company, as that term is referred to in the definition of ''parent company'' set forth in section 772.1; hence the eligible applicant may be owned or controlled by other entities. However, the ultimate parent company cannot be an eligible user under this license exception unless it is also the eligible applicant. Application requirements are set forth in paragraph (e) of this section.

(2) *Eligible users.* Eligible users may be eligible applicants, as described in paragraph (b)(1) of this section, and their wholly-owned or ''controlled in fact'' entities that implement and maintain the ICT control plan of the eligible applicant and that are included in the applications submitted by eligible applicants pursuant to paragraph (e) of this section. Eligible applicants must ensure that each eligible user implements the eligible applicant's ICT control plan, including the use of non-disclosure agreements as described in paragraph (d)(1)(viii) of this section.

(3) *Eligible recipients.*

(i) *Entities.* Eligible recipients of items under this license exception may be eligible applicants as described in paragraph (b)(1) of this section, eligible users as described in paragraph (b)(2) of this section, and eligible applicants' other wholly-owned or controlled in fact companies that implement and maintain the ICT control plan of the eligible applicant and that are named in the applications submitted by the eligible applicant pursuant to paragraph (e) of this section. Eligible applicants must ensure that each eligible recipient, as described in this paragraph, implements the eligible applicant's ICT control plan, including the use of non-disclosure agreements as described in paragraph (d)(1)(viii) of this section.

(ii) *Non-U.S. national employees receiving technology or source code.* Non-U.S. national employees (wherever located) of entities that are eligible applicants, eligible users, and/or eligible recipients of this license exception may be eligible recipients of technology and source code under this license exception provided the non-U.S. national employees sign non-disclosure agreements with their employer in which the non-U.S. national employees agree not to release any technology or source code in violation of the EAR. Additionally, if non-U.S. national employees are also foreign national employees in their country of employment, then such non-U.S. national employees must also be screened by the appropriate eligible user against end-user lists compiled by the U.S. government. For further information on employees, non-disclosure agreements, and screening requirements, see §§ 772.1, 740.19(d)(1)(viii), and 740.19(d)(1)(ix) respectively.

Note 1 to Paragraph (B)(3)(II) of this Section: Non-U.S. national employees are those employees who are not U.S. citizens, lawful permanent residents of the United

States, or individuals protected under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). Non-U.S. national employees include those working in the United States and outside of the United States. Furthermore, non-U.S. national employees include those employees who would otherwise be permitted to receive technology or source code only under: (1) A deemed export or deemed reexport license; (2) a license issued to a facility, and the employee is a citizen or legal permanent resident of the same country where the facility is located; and (3) a license issued to a facility, but the employee is not a citizen or legal permanent resident of the country where the facility is located; (4) another authorization such as a license exception other than ICT.

Note 2 to Paragraph (B)(3)(II) of this Section: Foreign national employees are those non-U.S. national employees who are not citizens or legal permanent residents of the country in which they are employed. Foreign national employees include those employees who would otherwise receive technology or source code under: (1) A deemed export or deemed reexport license; or (2) a license to a facility, but the employee is not a citizen or legal permanent resident of the country where the facility is located; or (3) another authorization such as a license exception other than ICT.

(4) *Eligible uses.* Items exported, reexported, or transferred within country under this license exception may be exported, reexported, or transferred only for purposes of the internal company use by approved eligible applicants and approved eligible users of this license exception, as described in paragraphs (b)(1) and (b)(2) respectively, of this section.

(c) *Restrictions.*

(1) No item may be exported, reexported, or transferred within country under this license exception to destinations in or nationals of Country Group E or North Korea.

(2) No item exported, reexported, or transferred within country under this license exception may be subsequently exported, reexported, or transferred for purposes other than the internal company use of approved eligible applicants, eligible users, and eligible recipients, as described in paragraphs (b)(1), (b)(2), and (b)(3)(i) respectively, of this section, unless done so in accordance with the EAR. See paragraph (c)(3) of this section for further restrictions.

(3) No items that have been exported, reexported, or transferred (in-country) under License Exception ICT may be subsequently exported, reexported, or transferred (in-country) under License Exception APR (see § 740.16).

(4) No release of technology or source code is authorized under this license exception to foreign national employees whose visa or authority to work has been revoked, denied, or is otherwise not valid. It is the responsibility of the exporter to ensure that foreign national employees working in the United States maintain a valid U.S. visa if they are required to hold a visa from the United States.

(5) No release of technology or source code is authorized under this license exception to a foreign national employee, as described in note 2 to paragraph (b)(3)(ii), if that employee or a prior employer of that employee is listed on any of the end-user lists of concern compiled by the U.S. government. In such instances, eligible applicants (or eligible users, as appropriate) should obtain the appropriate authorization required under the EAR.

(6) No items controlled for Encryption Items (EI) reasons under ECCNs 5A002, 5D002, or 5E002 may be exported, reexported, or transferred (in-country) under this license exception.

(7) No items controlled for Significant Items (SI) reasons may be exported, reexported, or transferred (in-country) under this license exception.

(d) *ICT control plan.* Prior to submitting an application to BIS under paragraph (e) of this section, and before making any exports, reexports, or in-country transfers under this license exception, eligible applicants must implement an ICT control plan that is designed to ensure compliance with this license exception and the EAR. In addition, eligible users and eligible recipient entities must implement the ICT control plan of the eligible applicant. Under an ICT control plan, which may be a component of a more comprehensive export compliance program, all entities that seek to use this license exception must ensure that commodities, software, and technology, where applicable, will not be exported, reexported, or transferred in violation of this license exception. With their application for authorization (as described in paragraph (e) of this section) to use this license exception, eligible applicants must submit a copy of the ICT control plan and must specifically note which of their wholly-owned or controlled in fact entities are covered by the plan. BIS may require the eligible applicant to modify the ICT control plan before authorizing use of this license exception. Paragraph (d)(1) of this section lists the mandatory elements of an ICT control plan. Paragraph (d)(2) of this section lists exceptions to addressing certain mandatory elements in paragraph (d)(1) in the ICT control plan.

(1) *Mandatory elements of an ICT control plan.* The following elements are mandatory, subject to the exceptions in paragraph (d)(2) of this section. The ICT control plan must describe how each mandatory element will be implemented. In order to provide guidance, the mandatory elements described in paragraphs (d)(1)(i) through (d)(1)(v) include illustrative examples of evidence demonstrating how the element may be addressed. Note that these illustrative examples are guidelines only; satisfying the five required elements in paragraphs (d)(1)(i) through (d)(1)(v) of this section is dependent upon the nature and complexity of company activities, the type of items that will be exported, reexported, or transferred under this license exception (i.e., commodities, software, and/or technology), the countries involved, and the relationship between the eligible users and eligible recipients of this license exception, as described in paragraphs (b)(2) and (b)(3)(i) respectively of this section. With respect to the other four elements of the ICT control plan, eligible applicants must fulfill certain specified requirements. For paragraphs (d)(1)(vi), (d)(1)(vii), (d)(1)(viii), and (d)(1)(ix) of this section, no illustrative examples are included. Note, however, that to satisfy the self-evaluation element in paragraph (d)(1)(vi) of this section, establishing self-audits, creating a checklist, and developing corrective measures are required, but the self-audits may be structured in a manner that works best for the eligible applicant and its wholly-owned or controlled in fact entities. In order to use this license exception for technology or software, a letter of assurance, consistent with §§ 740.19(c) and 740.6, must be provided by a company officer of the eligible applicant. Additionally, in order to use this license exception for non-U.S. national employees, wherever located, to receive technology or source code under this license exception, submitting a template or sample of the non-disclosure agreement to be used is a mandatory element. Also, in order to use this license exception for non-U.S. national employees who are also foreign national employees, reviewing lists of end-users of concern compiled by the U.S. government is a mandatory element.

(i) *Corporate commitment to export compliance.* Evidence of a corporate commitment to export compliance may include: An organizational chain of command for export controls compliance issues and related issues of concern; senior management member(s) responsible for export controls compliance, who are able to

demonstrate how compliance issues are resolved; internal recordkeeping requirements in accordance with the EAR; maintenance of a sound commodity classification methodology; and commitment of resources to implement and maintain an ICT control plan.

(ii) *Physical security plan.* Evidence of a physical security plan may include: Methods of physical security that prevent the transfer of commodities, software, and technology on the Commerce Control List outside of the internal company structure; and organization and maintenance of up-to-date building layouts, including a description of physical security measures, such as secured doors and badges as well as biometric, guard, and perimeter controls.

(iii) *Information security plan.* Evidence of an information security plan may include: Organization and maintenance of up-to-date virtual security layouts and descriptions of what information security methods are in place, such as password protection, firewalls, segregated servers, non-network computers, and intranet security.

(iv) *Personnel screening procedures.* Evidence of personnel screening procedures may include: Thorough pre-screening analysis of new foreign national employees, as described in note 2 to paragraph (b)(3)(ii), which includes, but is not limited to, criminal background, driver's license, and credit history, before allowing them to receive technology or source code through a license or license exception.

(v) *Training and awareness program.* Evidence of a training and awareness program may include: Creation, scheduling, and performance of regular training programs (for all employees working in areas relevant to export controls) to inform employees about export controls and limits on their access to technology or source code.

(vi) *Self-evaluation program.* Evidence of a self-evaluation program must include the following three components: Creation and performance of regular internal self-audits, which may be conducted through the use of internal and/or external resources depending upon the needs and demands of the organization; creation of a checklist of critical areas and items to review, including identification of any deficiencies; and development of corrective procedures or measures implemented to correct identified deficiencies. **Note:** Disclosure of identified deficiencies and corrective actions will be considered when evaluating effective ICT control plans under paragraph (f)(2). Failure to disclose this information could result in revocation, as noted in paragraph (j). Any violations of the EAR that are uncovered in the process of conducting this self-evaluation should be disclosed to BIS in accordance with the voluntary self-disclosure procedures found in section 764.5.

(vii) *Letter of assurance for software and technology.* A company officer of the eligible applicant must submit a signed statement on company letterhead stating that under this license exception, the eligible applicant and each eligible user and/or eligible recipient entity will not export, reexport, or transfer (in-country) software (including the source code for the software) and technology, consistent with paragraph (c)(1) of this section and consistent with paragraphs (a)(1) and (a)(2) of § 740.6.

(viii) *Signing of non-disclosure agreements.* Non-disclosure agreements not to release any technology or source code must be binding with respect to any technology or source code that has been released or otherwise provided to any non-U.S. national employee, wherever located, on the basis of this license exception, until such technology or source code no longer requires a license to any destination under the EAR, regardless of whether the non-U.S. national's employment relationship with the company remains in effect. Non-disclosure agreements should be completed in both English and the non-U.S. national employee's native language.

(ix) *Review of end-user lists.* Foreign national employees, as described in note 2 to paragraph (b)(3)(ii), who are eligible to receive technology or source code under this license exception, must be screened against all lists of end-users of concern compiled by the U.S. government. In addition, prior employers of the foreign national employees must also be screened. These lists can be accessed at *http://www.bis.doc.gov.* See paragraph (c)(5) of this section for specific restrictions.

(2) *Exceptions to certain mandatory elements of an ICT control plan.*

(i) If this license exception will be used only for commodities, then the ICT control plan elements described in paragraphs (d)(1)(iii), (d)(1)(iv), (d)(1)(vii), (d)(1)(viii), and (d)(1)(ix) are not mandatory. In this situation, the ICT control plan must state that this license exception will be used for commodities only and not used for software or technology.

(ii) If this license exception will be used only for software (excluding source code), or if this license exception will be used only for commodities and software (excluding source code), then the ICT control plan elements described in paragraphs (d)(1)(iv), (d)(1)(viii), and (d)(1)(ix) are not mandatory. In this situation, the ICT control plan must state that this license exception will be used for software (excluding source code) only, or will be used for commodities and software (excluding source code) only, and not used for technology or source code.

(e) *Information required for grant of ICT authorization.*

(1) Prior to the export, reexport, or in-country transfer of items on the Commerce Control List under this license exception, an eligible applicant, as described in paragraph (b)(1) of this section, must submit the following information to BIS:

(i) For the eligible applicant: Full name of company; location of company headquarters; location of principal place of business; complete physical addresses (listing a post office box is insufficient) of company's headquarters and principal place of business; post office box if used as an alternate address; location of registration or incorporation; ownership of company, including listing all individuals or groups that have at least a 10% ownership interest; and need for License Exception ICT, including listing the ECCNs of the items that will be exported, reexported, or transferred (in-country) under this license exception and a detailed narrative describing the intended use of the items covered by the listed ECCNs and the anticipated resulting commodities, where relevant;

(ii) For each company, separate from the eligible applicant, that is intended to be an eligible user or eligible recipient that will export, reexport, transfer (in-country), or receive items under this license exception: Full name of entity; location of entity's principal place of business; complete physical address (listing a post office box is insufficient) of entity's principal place of business; post office box if used as an alternate address; location of entity's registration or incorporation; relationship of the entity to the eligible applicant; and ownership of company, including listing all individuals or groups that have at least a 10% ownership interest, where relevant;

(iii) Name and contact information of the employee(s) responsible for implementing the ICT control plan of the eligible applicant and its wholly-owned or controlled in fact entities that are eligible users and/or eligible recipients;

(iv) A full copy of the ICT control plan, as described in paragraph (d) of this section, covering the eligible

applicant and its wholly-owned or controlled in fact entities that are eligible users and/or eligible recipients;

(v) Documentation showing implementation of screening, training, and self-evaluation elements in the ICT control plan, as described in paragraphs (d)(1)(iv), (d)(1)(v), (d)(1)(vi), and (d)(1)(ix), where applicable; and

(vi) A signed statement, on company letterhead, by a company officer of the eligible applicant that states each eligible user and/or eligible recipient entity will allow BIS, at the agency's discretion, to conduct audits to ensure compliance with this license exception.

(2) Submit all required information to: Bureau of Industry and Security, Attn: License Exception ICT, HCHB Room 2705, 14th Street & Pennsylvania Ave., NW., Washington, DC 20230.

(f) *Review of License Exception ICT submissions.* Upon receipt of completed information required under paragraph (e)(1) of this section, BIS will conduct a review described in paragraph (f)(1) of this section. During the review, BIS will use the factors described in paragraph (f)(2) of this section to determine authorization. In addition to informing the eligible applicant whether it may use this license exception, BIS will provide the terms of the ICT authorization including which wholly-owned or controlled in fact entities may use this license exception and the ECCNs of the items that may be exported, reexported, or transferred under this license exception. BIS will respond in writing to the eligible applicant once a decision is reached.

(1) *Processing procedures.* For purposes of review only, License Exception ICT submissions will be reviewed in the manner that license applications are reviewed pursuant to §§ 750.3 and 750.4 of the EAR and Executive Order 12981, as amended by Executive Orders 13020, 13026, and 13117.

(2) *Review factors.* The following factors will be considered in determining License Exception ICT authorization: Prior licensing history; demonstration of an effective ICT control plan; and need for the license exception, as expressed in the submission for ICT authorization, including the requested ECCNs and the relationship of the wholly-owned or controlled in fact entities to the parent company or other entities of national security or foreign policy concern. BIS will also consider any deficiencies, including violations of the EAR, that are uncovered as part of the self-evaluation element of the eligible applicant's ICT control plan described in (d)(vi) of this part, and, if appropriate, disclosed to BIS in accordance with section 764.5, as well as any corrective action that was subsequently taken.

(g) *Changes to Submitted Information Following Receipt of Authorization.*

(1) Before an entity not previously identified in an approved eligible applicant's initial submission under paragraph (e) of this section may use this license exception, the approved eligible applicant must submit the information regarding the new entity in accordance with paragraph (e)(1)(ii) of this section to BIS at the address listed in paragraph (e)(2) of this section. This submission will undergo the same process of review as the initial submission, which is described in paragraph (f)(1) of this section.

(2) After obtaining authorization to use this license exception, an approved eligible applicant may request License Exception ICT eligibility for additional ECCNs that were not previously identified in its initial submission. To make such a request, the approved eligible applicant must submit the necessary information required under paragraph (e)(1)(i) regarding the additional ECCNs to BIS at the address listed in paragraph (e)(2) of this section. This submission will undergo the same process of review as the initial submission, which is described in paragraph (f)(1) of this section.

(3) If control of an approved eligible applicant changes after obtaining prior authorization to use this license exception (e.g., through change of ownership, acquisition, or merger), authorization to use this license exception will no longer be valid. Under such circumstances, the new eligible applicant must submit all information required under paragraph (e)(1) of this section to obtain new authorization to use this license exception. This submission will undergo the same process of review described in paragraph (f)(1) of this section. The new eligible applicant and its wholly-owned or controlled in fact entities may export, reexport, or transfer within country items under this license exception only upon receipt of written authorization from BIS. See the definition of ''controlled in fact'' in § 772.1 for further information regarding changes in ownership.

(4) If an approved eligible applicant's control of an approved eligible user or eligible recipient entity changes after obtaining prior authorization to use this license exception (e.g., through a different organization's acquisition or merger of the approved eligible user or eligible recipient entity), the newly-controlled eligible user or eligible recipient entity must immediately terminate use of this license exception. In addition, the approved eligible applicant must notify BIS in writing of the removal of the newly-controlled entity from use of this license exception within fifteen (15) days after the change in control. Notification letters should be submitted to the address in paragraph (g)(5) of this section. Subject to paragraph (g)(3) of this section, the approved eligible applicant and its other approved eligible users and/or eligible recipient entities may continue to use this license exception. See the definition of ''controlled in fact'' in § 772.1 for further information.

(5) After obtaining authorization to use this license exception, if the legal name of an approved eligible applicant, eligible user, or eligible recipient entity of this license exception, as described in paragraphs (b)(1), (b)(2), and (b)(3)(i) of this section respectively, changes, the approved eligible applicant must notify BIS of the name change within fifteen (15) days after the name change. Subject to paragraph (g)(3) of this section, the approved eligible applicant may continue to use this license exception after the name change but must submit a letter informing BIS of the name change to the Director of the Office of Exporter Services at: Office of Exporter Services, HCHB Room 2705, 14th Street & Pennsylvania Ave., NW., Washington, DC 20230.

(h) *Annual reporting requirement.*

(1) After receiving authorization to use License Exception ICT pursuant to paragraph (e) of this section, approved eligible applicants must submit the following information to BIS on an annual basis:

(i) The name, nationality, and date of birth of foreign national employees, as described in note 2 to paragraph (b)(3)(ii) of this section, who have received technology or source code under License Exception ICT during the prior reporting year.

(ii) The name, nationality, and date of birth of foreign national employees, as described in note 2 to paragraph (b)(3)(ii), who are subject to the reporting requirement in paragraph (h)(1)(i) of this section and who have terminated their employment with the approved eligible applicant, eligible user, or eligible recipient entity. This requirement does not apply to employees subject to the reporting requirement in paragraphs (h)(1)(i) and (h)(1)(ii) of this section who have changed positions within the parent company's structure (i.e., among the approved eligible applicant parent company's wholly-owned or controlled in fact entities that are approved eligible

users and/or eligible recipients of this license exception).

(iii) A certification signed by a company officer stating that the approved eligible applicant and its approved eligible users and eligible recipient entities are in compliance with the terms and conditions of License Exception ICT. This certification should include the results of the self-evaluations described in paragraph (d)(1)(vi) of this section.

(2) Annual reports must be submitted to and received by BIS no later than February 15 of each year, and must cover the period of January 1 through December 31 of the prior year. Reports must be submitted to the address listed in paragraph (e)(2) of this section.

(i) *Auditing use of License Exception ICT.*

(1) *Biennial audit.* BIS will review the use of License Exception ICT by the approved eligible applicant and its approved eligible users and/or eligible recipients approximately once every two years. Generally, BIS will give reasonable notice to approved eligible applicants in advance of an audit of their use of License Exception ICT. As part of the biennial audit, BIS may request that an approved eligible applicant and its approved eligible users and/or eligible recipient entities submit all or part of their records described in paragraph (h) of this section.

(2) *Discretionary audit.* BIS may conduct special unannounced system reviews if BIS has reason to believe an approved eligible applicant or one of its approved eligible users and/or eligible recipients has improperly used or failed to comply with the terms and conditions of License Exception ICT.

(j) *Revision, Suspension, and Revocation of License Exception ICT.* Consistent with § 740.2(b), BIS may revise, suspend, or revoke authorization to use License Exception ICT in whole or in part, without notice. Factors that might warrant such action may include, but are not limited to, the following: use of ICT for other than internal company use, release of controlled items to unauthorized entities or destinations, failure to maintain the ICT control plan initially submitted to BIS as part of the application, and failure to comply with reporting and recordkeeping requirements.

(k) *Recordkeeping requirements.* In addition to the recordkeeping requirements set forth in part 762 of the EAR, entities that are approved eligible applicants, eligible users, and/or eligible recipients of this license exception, as described in paragraphs (b)(1), (b)(2), and (b)(3)(i) of this section respectively, must retain copies of their ICT control plan and associated materials, including signed non-disclosure agreements. Entities that are approved eligible applicants, eligible users, and/or eligible recipients must also maintain records, by ECCN, of the items on the Commerce Control List that have been exported, reexported, or transferred within country under the authority of this license exception. For foreign national employees receiving technology or source code under ICT, approved eligible applicants, eligible users, and eligible recipient entities are required to record only the initial release of such technology or source code to a given foreign national employee; subsequent release of the same technology or source code to that same foreign national employee does not require additional recordkeeping. However, if a foreign national receives technology or source code under ICT that is controlled under a different ECCN, then the initial receipt of the different technology or source code must also be recorded. Such records must be made available to BIS on request.

3. Supplement No. 4 to part 740 is added to read as follows:

Supplement No. 4 to Part 740—Countries in Which Eligible Applicants Must Be Incorporated In or Have Their Principal Place of Business in For License Exception Intra-Company Transfer (ICT) Eligibility

Argentina
Australia
Austria
Belgium
Bulgaria
Canada
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Iceland
Ireland
Italy
Japan
Korea, South
Latvia
Lithuania
Luxembourg
Malta
Netherlands
New Zealand
Norway
Poland
Portugal
Romania
Slovakia
Slovenia
Spain
Sweden
Switzerland
Turkey
United Kingdom
United States

PART 772—[AMENDED]

4. The authority citation for part 772 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008).

5. Section 772.1 is amended:

a. By amending the definition of ''Controlled in fact'' as set forth below; and

b. By adding, in alphabetical order, the definitions of ''Employee'' and ''Parent company'', as follows:

§ 772.1 Definitions of Terms as Used in the Export Administration Regulations (EAR).

* * * * *

Controlled in fact. For purposes of License Exception ICT only (see § 740.19 of the EAR), the term ''controlled in fact'' means the authority or ability of an entity, which has been routinely exercised in the past, to establish the general policies or day-to-day operations of a different organization, such as a subsidiary, branch, or office. An entity will be presumed to have control over a different organization when:

(a) The entity beneficially owns or controls (whether directly or indirectly) more than 50 percent of the outstanding voting securities of the different organization;

(b) The entity operates the different organization pursuant to the provisions of an exclusive management contract; or

(c) Members of the entity's governing body (*i.e.*, board of directors) comprise a majority of the comparable governing body of the different organization.

For purposes of the Special Comprehensive License (part 752 of the EAR), controlled in fact is defined as it is under the Restrictive Trade Practices or Boycotts (§ 760.1(c) of the EAR).

* * * * *

Employee. For purposes of License Exception ICT only (see § 740.19 of the EAR), ''employee'' means any person who works, with or without compensation, in the interest of an entity that is an approved eligible user (see § 740.19(b)(2)) or an entity that is an approved eligible recipient (see § 740.19(b)(3)(i)). The person must work at the approved eligible entity's locations or at locations assigned by the approved eligible entity, such as at remote sites or on business trips. This definition may include permanent employees, contractors, and interns.

* * * * *

Parent company. For purposes of License Exception ICT only (see § 740.19 of the EAR), ''parent company'' means any entity that wholly-owns or controls in fact a different entity, such as a subsidiary or branch. The parent company may be incorporated in and conduct its principal place of business inside the United States or outside of the United States, but certain location restrictions apply (see § 740.19(b)(1) and Supplement No. 4 to part 740). The parent company itself may also have an ultimate parent company, meaning the parent company is wholly-owned or controlled in fact by another entity or other entities. *See also* the definition of ''controlled in fact'' in this section for further information.

* * * * *

Dated: September 29, 2008.

Christopher R. Wall,

Assistant Secretary for Export Administration.

[FR Doc. E8–23506 Filed 10–2–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[WO–250–1220–PM–24 1A]

RIN 1004–AD96

Visitor Services

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend its regulations to remove the Land and Water Conservation Fund Act (LWCFA) as one of the authorities of our Recreation regulations, in accordance with the Federal Lands Recreation Enhancement Act of 2004 (REA). The rule will also amend and reorder the prohibitions to separate those that apply specifically to campgrounds and picnic areas from those with more general applications. The reordering is necessary to broaden the scope to include all areas where standard amenity, expanded amenity, and special recreation permit fees are charged under REA. The proposed rule would remove an unnecessary provision that has been interpreted to require the BLM to publish supplementary rules concerning failure to pay fees established by the recreation regulations, thus relieving the BLM from publishing such separate specific supplementary rules for each area. Finally, it will make technical changes to maintain consistency with other BLM regulations.

DATES: We will accept comments and suggestions on the proposed rule until December 2, 2008. The BLM will not necessarily consider any comments received after the above date in making its decision on the final rule.

ADDRESSES: You may submit comments by any of the following methods listed below:

Mail: U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 401 LS, 1849 C St., NW., Attention: [RIN: 1004–AD96] Washington, DC 20240.

Personal or messenger delivery: 1620 L Street, NW., Room 401, Washington, DC 20036.

Federal eRulemaking Portal: www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: For information on the substance of the proposed rule, please contact Hal Hallett at (202) 452–7794 or Anthony Bobo Jr. at (202) 452–0333. For information on procedural matters, please contact Chandra Little at (202) 452–5030. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during normal business hours. FIRS is available twenty-four hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Electronic Access and Filing Address

You may view an electronic version of this proposed rule at the BLM's Internet home page at *www.blm.gov* or at *http://www.regulations.gov*. You may comment via the Internet to: *http://www.regulations.gov*. If you submit your comments electronically, please include your name and return address in your Internet message.

Written Comments

Confine written comments on the proposed rule to issues pertinent to the proposed rule and explain the reason for any recommended changes. Where possible, reference the specific section or paragraph of the proposal which you are addressing. The BLM need not consider or include in the Administrative Record for the final rule comments which it receives after the comment period close (see **DATES**), or comments delivered to an address other than those listed above (see **ADDRESSES**).

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.

Reviewing Comments Submitted by Others

Comments, including the names and street addresses, and other contact information, will be available for public review at the address listed under **ADDRESSES** during regular business hours (7:45 am to 4:15 pm), Monday through Friday, except holidays.

II. Background

The passage of the REA, 16 U.S.C. 6801 *et seq.*, required the BLM to change its fee management regulations, policies, and procedures to bring them into compliance with this law. The BLM has already accomplished this by including in part 2930 all recreation fee management regulations including the requirement that visitors pay fees before occupying a campground or picnic area. The BLM is now amending part 8360 to complete the regulatory changes made necessary by the law, including removal of any language pertaining to recreation fees. In addition, the section dealing with the collection of fossils was modified to include common plant fossils, reflecting long established BLM policies. Other changes were made to group related regulations in the same section to simplify language and clarify the intent, and to resolve inconsistencies between existing provisions.

III. Discussion of Proposed Rule

Section 8360.0–3 Authority

The proposed rule removes the Land and Water Conservation Fund Act (LWCFA) (16 U.S.C. 460*l*–6a) as an authority for the regulations. The enactment of the REA changed the BLM's authority to collect recreation fees. Recreation fees that were previously authorized under the LWCFA are now included under REA. The BLM's policies and procedures have also been revised to reflect this new and revised authority.

Section 8360.0–5 Definitions

In paragraph (c), the proposed rule adds the word ''recreation'' as a modifier to developed sites and areas in order to clarify that the definition is specific to developed recreation sites and areas. The same language is inserted elsewhere in this subpart to distinguish developed recreation sites and areas from other developed sites and areas used for non-recreation purposes.

Section 8365.1–5 Property and Resources

In paragraph (b)(2), the proposed rule adds plant fossils to the list of resources that recreational visitors may collect for non-commercial purposes. This change will correct an oversight in this provision and clarify what has been a long-standing policy of the BLM to allow recreational collecting of common invertebrate and plant fossils, not just common invertebrate fossils. This policy was previously incorporated into BLM Handbook H–8270–1, ''General Procedural Guidance for Paleontological Resources Management,'' which provides that, subject to the provisions of 43 CFR subpart 8365, and unless otherwise prohibited by land use plans or other authorities, invertebrate and plant fossils may be collected in reasonable amounts for non-commercial purposes without a permit.

Also in paragraph (b)(2), the proposed rule removes rocks from the list because rocks are already included in and covered by ''mineral materials'' in paragraph (b)(4) of the same section. Otherwise, paragraphs (b)(2) and (b)(4) would remain in conflict concerning whether rocks can be collected by recreational visitors. This conflict has created problems in the past in the management of mineral materials.

Section 8365.2–3 Occupancy and Use

The provisions in this section have been reordered to separate those that apply specifically to campgrounds and picnic areas from those that apply to all developed recreation sites and areas, including campgrounds and picnic areas. The restructuring was in response to a need to include all areas where standard amenity, expanded amenity, and special recreation fees are authorized under the REA. This also brings this section into conformance with part 2930, which was previously rewritten in response to the REA.

The proposed rule also amends this section by removing as a prohibited act failure to pay fees. This prohibition is already included in 43 CFR 2933.33, so it is unnecessary in these regulations. If the proposed rule is adopted, it will also no longer be necessary to include fee requirements in supplementary rules issued under section 8365.1–6.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These proposed regulations are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866.

(1) These proposed regulations will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) These proposed regulations will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) These proposed regulations do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients.

(4) These proposed regulations do not raise novel legal or policy issues. The BLM policies and procedures have merely been amended to reflect new statutory authority, and to remove inconsistencies in language.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

1. Are the requirements in the proposed regulations clearly stated?

2. Do the proposed regulations contain technical language or jargon that interferes with their clarity?

3. Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

4. Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading, for example: § 8360.0–5 Definitions.

5. Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

National Environmental Policy Act (NEPA)

The BLM has determined that this proposed rule merely amends the statutory authority of our Recreation regulations from the LWCF to the REA. This proposed rule would bring our recreation regulations into compliance with the REA. The proposed rule amends and reorders the prohibitions to separate those that apply specifically to campgrounds and picnic areas from those with more general application, but does not change their effect. It makes it clear that common plant fossils are available to recreational collectors without changing policy in that regard, and resolves minor inconsistencies between provisions. Therefore, it is categorically excluded from environmental review under Section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. In addition, the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The proposed rule pertains to individuals and families recreating on the public lands and not to small businesses or other small entities. Therefore, the BLM has determined under the RFA that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a ''major rule'' as defined at 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. That is, it would not have an annual effect on the economy of $100 million or more; it would not result in major cost or price increases for consumers, industries, government agencies, or regions; and it would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The proposed rule merely amends the regulations to change the statutory authority of the BLM's Recreation regulations from the LWCF to the REA, to make technical changes to bring our recreation regulations into compliance with the REA, and to make them internally consistent. The rule will also amend and reorder the prohibitions to separate those that apply specifically to campgrounds and picnic areas from those with more general application.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on state, local, or Tribal governments or the private sector, in the aggregate, of $100 million or more per year; nor does this proposed rule have a significant or unique effect on state, local, or Tribal governments. The rule would impose no requirements on any of these entities. We have already shown, in the previous paragraphs of this section of the preamble, that the change proposed in this rule would not have effects approaching $100 million per year on the private sector. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

This proposed rule is not a government action capable of interfering with constitutionally protected property rights. It merely updates the regulations to reflect changes in authority for the BLM recreation program covered by the regulations, and makes editorial changes as discussed in this preamble. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

This proposed rule will not have a substantial direct effect on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the levels of government. It would not apply to states or local governments or state or local governmental entities. Therefore, in accordance with Executive Order 13132, the BLM has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, we have determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that this rule does not include policies that have tribal implications. This rule has no effect on Tribal lands, and it affects members of Tribes only to the extent that they use public lands and facilities for recreation. This rule will bring our recreation regulations into compliance with the REA.

Information Quality Act

In developing this proposed rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554).

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

In accordance with Executive Order 13211, the BLM has determined that this proposed rule will not have substantial direct effects on energy supply, distribution, or use, including a shortfall in supply or price increase. The rule has no bearing on energy development, but merely changes the authority provisions for and rearranges certain prohibited act provisions for recreational visitors on the public lands. This rule should have no effect on the volume of visitation or on consumption of energy supplies.

Executive Order 13352—Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that this proposed rule is administrative in nature and only reflects changes in authority, and reorganizes and clarifies certain provisions. It does not impede facilitating cooperative conservation. It does not affect the interests of persons with ownership or other legally recognized interests in land or other natural resources, properly accommodate local participation in the Federal decision-making process, or relate to the protection of public health and safety.

Paperwork Reduction Act

These regulations do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Authors

The principal authors of this rule are Hal Hallet and Anthony Bobo of the Recreation and Visitor Services Division, Washington Office, BLM assisted by Chandra Little and Ted Hudson of the Regulatory Affairs Group, Washington Office, BLM.

List of Subjects in 43 CFR Part 8360

Penalties, Public lands, Reporting and recordkeeping requirements, and Wilderness areas.

Dated: September 18, 2008.

C. Stephen Allred,

Assistant Secretary of the Interior, Land and Minerals Management.

For the reasons explained in the preamble, and under the authority of 43 U.S.C. 1740, we propose to amend chapter II, subtitle B of title 43 of the Code of Federal Regulations as follows:

PART 8360—VISITOR SERVICES

1. The authority citation for part 8360 is revised to read as follows:

Authority: 43 U.S.C. 1701 *et seq.*, 43 U.S.C. 315a, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 1241 *et seq.*

Subpart 8360—General

2. Revise § 8360.0–3 to read as follows:

§ 8360.0–3 Authority.

The regulations of this part are issued under the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Sikes Act (16 U.S.C. 670g), the Taylor Grazing Act (43 U.S.C. 315a), the Wild and Scenic Rivers Act (16 U.S.C. 1281c), the Act of September 18, 1960, as amended, (16 U.S.C. 877 *et seq.*), and the National Trails System Act (16 U.S.C. 1241 *et seq.*).

3. Amend § 8360.0–5 by revising paragraph (c) to read as follows:

§ 8360.0–5 Definitions.

* * * * *

(c) *Developed recreation sites and areas* mean sites and areas that contain structures or capital improvements primarily used by the public for recreation purposes. Such sites or areas may include such features as: Delineated spaces for parking, camping or boat launching; sanitary facilities; potable water; grills or fire rings; tables; or controlled access.

* * * * *

4. Revise § 8365.1–5(b)(2) to read as follows:

§ 8365.1–5 Property and resources.

* * * * *

(b) * * *

(2) Nonrenewable resources such as mineral specimens, common invertebrate and plant fossils, and semiprecious gemstones;

* * * * *

5. Revise § 8365.2–3 to read as follows:

§ 8365.2–3 Occupancy and use.

In developed camping and picnicking areas, no person shall, unless otherwise authorized:

(a) Pitch any tent, park any trailer, erect any shelter or place any other camping equipment in any area other than the place designed for it within a designated campsite;

(b) Leave personal property unattended for more than 24 hours in a day use area, or 72 hours in other areas. Personal property left unattended beyond such time limit is subject to disposition under the Federal Property and Administration Services Act of 1949, as amended (40 U.S.C. 484(m));

(c) Build any fire except in a stove, grill, fireplace or ring provided for such purpose;

(d) Enter or remain in campgrounds closed during established night periods except as an occupant or while visiting persons occupying the campgrounds for camping purposes;

(e) Occupy a site with more people than permitted within the developed campsite; or

(f) Move any table, stove, barrier, litter receptacle or other campground equipment.

[FR Doc. E8–23258 Filed 10–2–08; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 400

[Docket No. NHTSA–2008–0142]

RIN 2127–AK37

E–911 Grant Program

AGENCIES: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT); National Telecommunications and Information Administration (NTIA), Department of Commerce (DOC).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This joint notice proposes implementing regulations for the E–911 Grant Program authorized under the Ensuring Needed Help Arrives Near Callers Employing 911 (ENHANCE 911) Act of 2004 (Pub. L. 108–494, codified at 47 U.S.C. 942). The Act authorizes grants for the implementation and operation of Phase II enhanced 911 services and for migration to an IP-enabled emergency network. This NPRM proposes the application, award and administrative requirements for the E–911 grant program and seeks comments thereon.

DATES: Written comments may be submitted to this agency and must be received by December 2, 2008.

ADDRESSES: You may submit comments identified by DOT Docket ID Number NHTSA–2008–0142 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://wwww.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* 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.
- *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., Eastern Time, Monday through Friday, except Federal holidays.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program issues: Mr. Drew Dawson, Director, Office of Emergency Medical Services, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NTI–140, Washington, DC 20590. Telephone: (202) 366–9966. E-mail: *Drew.Dawson@dot.gov.*

For legal issues: Ms. Jin Kim, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NCC–113, Washington, DC 20590. Telephone: (202) 366–1834. E-mail: *Jin.Kim@dot.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

Trends in telecommunications mobility and convergence have put the nation's 911 system at a crossroads. The growing market penetration of both wireless telephones (commonly known as mobile or cell phones) and Voice over Internet Protocol (VoIP) telephony have underscored the limitations of the current 911 infrastructure. The 911 system, based on decades-old technology, cannot handle the text, data, image and video that are increasingly common in personal communications and critical to emergency response.

Many of the limitations of the current 911 system stem from its foundation on 1970s circuit-switched network technology. Each introduction of a new access technology (e.g., wireless) or expansion of system functions (e.g., location determination) requires significant engineering and system modifications. There appears to be consensus within the 911 community on the shortcomings of the present 911 system and the need for a new, more capable system, based upon a digital, Internet-Protocol (IP) based infrastructure.

Today, there are approximately 255 million wireless telephones in use in the United States. About 80 percent of Americans now subscribe to wireless telephone service and 14 percent of American adults live in households with only wireless telephones, i.e., no landline telephones. Of the estimated 240 million 911 calls made each year, approximately one-third originate from wireless telephones. In many communities, at least half of the 911 calls come from wireless telephones. Unlike landline 911 calls, not all wireless 911 calls are delivered to dispatchers with Automatic Number Information (ANI) and Automatic Location Information (ALI), two pieces of information that aid in identifying the telephone number and geographic location of the caller. The increasing use of VoIP communications has compounded this problem because the location of the caller cannot automatically be determined when a 911 call is made on some interconnected VoIP services. Without this information, emergency response times may be delayed. Prompt and accurate location information is critical to delivering emergency assistance. Ensuring enhanced 911 (E–911) service for each caller, i.e., telephone number and location information of the caller, is increasingly important to public safety, given the vast number of 911 calls originating from wireless and VoIP telephones.

Successful E–911 service implementation requires the cooperation of multiple distinct entities: Wireless carriers, wireline telephone companies (also known as local exchange carriers), VoIP providers, and Public Safety Answering Points (PSAPs). A PSAP is a facility that has been designated to receive emergency calls and route them to emergency personnel. For example, when a 911 call is made from a wireless telephone, the wireless carrier must be able to determine the location of the caller, the local exchange carrier must transmit that location information from the wireless carrier to the PSAP, and the PSAP must be capable of receiving such information.

Currently, many PSAPs are not technologically capable of receiving ANI and ALI from wireless 911 calls. In order to receive this information, PSAPs must upgrade their operations centers and make appropriate trunking arrangements (i.e., establish a wired connection between the PSAP and the networks of the local wireline telephone companies) to enable wireless E–911 data to pass from the wireless carrier to the PSAP. Once a PSAP is technologically capable of receiving this information, the PSAP can submit requests to wireless carriers for E–911 service. Under regulations of the Federal Communications Commission (FCC), this request triggers a wireless carrier's obligation to deploy E–911 service to a PSAP.

Upgrading the 911 system to an IP-enabled emergency network will enable E–911 calls from more networked communication devices, enable the transmission of text messages, photographs, data sets and video, enable geographically independent call access, transfer, and backup among and between PSAPs and other authorized emergency organizations, and support an ''interoperable internetwork'' of all emergency organizations.

Many PSAPs do not have the resources to make the upgrades necessary to request E–911 service. Some PSAPs are able to fund upgrades from their existing budgets, but other PSAPs must rely on funds collected by the State to maintain operation and make capital improvements to 911 services. While most States collect some type of wireless fee or surcharge on consumers' wireless telephone bills to help fund PSAP operations and upgrades, not all State laws ensure that such surcharges are dedicated to their intended use. In fact, some States have used E–911 surcharges to satisfy other State obligations that may be marginally related to public safety, even though PSAPs remain unable to receive E–911 service. *See, e.g.*, Government Accountability Office (GAO), *States' Collection and Use of Funds for Wireless Enhanced 911 Services, GAO–06–338 (March 2006); see also GAO, Survey on State Wireless E911 Funds*, GAO–06–400sp (2006).

Recognizing the need for dedicated funding of E–911 services, the ENHANCE 911 Act was enacted ''to improve, enhance, and promote the Nation's homeland security, public safety, and citizen activated emergency response capabilities through the use of enhanced 911 services, to further upgrade Public Safety Answering Point capabilities and related functions in receiving E–911 calls, and to support the construction and operation of a ubiquitous and reliable citizen activated system[.]'' The Act directs NHTSA and NTIA to establish a joint program to facilitate coordination and communications among stakeholders and to provide grants for the implementation and operation of E–911 services. The provisions of the Act expire on October 1, 2009. 47 U.S.C. 942(f)(2).

Section 3011 of the Deficit Reduction Act of 2005 (Pub. L. 109–171) authorized $43.5 million to NTIA for the implementation of the ENHANCE 911 Act, to be derived from the proceeds of an auction of analog television spectrum. Thereafter, the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53), as amended by the Consolidated Appropriations Act, 2008 (Pub. L. 110–161), authorized NTIA to borrow up to $43.5 million in advance of the spectrum auction and directed the agencies to allow a portion of the funds to be used to give priority to grants that are requested by PSAPs that are not capable of receiving 911 calls for the incremental costs of upgrading from Phase I to Phase II compliance. The New and Emergency Technologies 911 Improvement Act of 2008 (NET 911 Improvement Act) (Pub. L. 110–283) recently amended the Act to permit grant funds to be used for migration to an IP-enabled emergency network.

The agencies are now issuing this NPRM to implement the grant program.

II. Summary of the ENHANCE 911 Act

The ENHANCE 911 Act requires NHTSA and NTIA to ''establish a joint

program to facilitate coordination and communication between Federal, State, and local emergency communications systems, emergency personnel, public safety organizations, telecommunications carriers, and telecommunications equipment manufacturers and vendors involved in the implementation of E–911 services'' and ''create an E–911 Implementation Coordination Office [ICO] * * *.'' 47 U.S.C. 942(a)(1). The Act charges the ICO with three tasks related to E–911 grant program administration. Specifically, the Act requires the ICO to: (1) Advise and assist eligible entities in the preparation of plans required under the Act for the coordination and implementation of E–911 services; (2) receive and review grant applications and recommend approval or disapproval; and (3) oversee the use of grant funds in fulfilling implementation plans. 47 U.S.C. 942(a)(3). The agencies have centralized the grant-related administrative functions of the ICO within NHTSA.

The Act directs NHTSA and NTIA, acting through the ICO and after consultation with the Department of Homeland Security and the Federal Communications Commission, to provide grants to eligible entities for the implementation and operation of Phase II E–911 services, as defined by FCC regulations. 47 U.S.C. 942(b)(1). (Phase II E–911 service refers to providing PSAPs with the location of all 911 calls by latitude and longitude within 50 to 300 meters depending on the type of technology used. *See* 47 CFR 20.18.) The Act was amended by the NET 911 Improvement Act to permit grant funds to be used for migration to an IP-enabled emergency network.

The Act directs the agencies to issue joint implementing regulations prescribing the criteria for selection for grant awards after a 60-day public comment period. 47 U.S.C. 942(b)(4). The Act requires an applicant to certify that it has coordinated its application with the public safety answering points located within the jurisdiction; that the State has designated a single officer or governmental body to serve as the coordinator of implementation of E–911 services; that it has established a plan for the coordination and implementation of E–911 services; and that it has integrated telecommunications services involved in the implementation and delivery of Phase II E–911 services. 47 U.S.C. 942(b)(3).

In addition, the Act requires each applicant to certify that no portion of any designated E–911 charges imposed by the State or other taxing jurisdiction within the State is being or will be obligated or expended for any purpose other than E–911 purposes during the period at least 180 days immediately preceding the date of the application and continuing throughout the time grant funds are available to the applicant. 47 U.S.C. 942(c). The Act imposes a penalty for providing false information on a certification. Specifically, an applicant providing false information on a certification will not be eligible to receive an E–911 grant, must return any grant awarded during the time that the certification is not valid, and is ineligible to receive subsequent E–911 grants. 47 U.S.C. 942(c)(4).

III. Proposed Regulations

As directed by the ENHANCE 911 Act, today's notice sets forth application, award and administrative procedures to implement the E–911 grant program.

A. Definitions (47 CFR 400.2)

Generally, terms used in this part are terms defined by the ENHANCE 911 Act. The NET 911 Improvement Act, which amended the ENHANCE 911 Act to allow grant funds to be used for migration to an ''IP-enabled emergency network,'' does not define that term. IP, or Internet Protocol, is one method or protocol by which data is sent from one computer to another. *See* RFC 791, ''Internet Protocol, DARPA Internet Program Protocol Specification'' (Sept. 1981), available at *http://rfc.net/rfc0791.html*; see also STD 5 ''Internet Protocol, DARPA Internet Program Protocol Specification'' (Sept. 1981), available at *http://rfc.net/std0005.html*. Because the agencies believe that such emergency communications should be transmitted securely, the agencies propose defining ''IP-enabled emergency network'' as an emergency communications network based on an infrastructure allowing secured transmission of data among computers that use the Internet Protocol.

B. Who May Apply (47 CFR 400.3)

The ENHANCE 911 Act directs NHTSA and NTIA to make grants to ''eligible entities'' for the implementation and operation of Phase II E–911 services. 47 U.S.C. 942(b)(1). The Act defines an eligible entity as ''a State or local government or a tribal organization'' and includes ''public authorities, boards, commissions, and similar bodies created by [a State or local government or a tribal organization] to provide E–911 services.'' 47 U.S.C. 942(f)(3)(A), (B). Based on this broad statutory definition, the agencies estimate that such entities number in the thousands. To minimize administrative costs and to streamline the grant process, the agencies propose to permit only States to apply for grant funds on behalf of all eligible entities located within their borders. We believe that this limitation on the number and identity of applicants is also necessary to properly address the certification requirements under the Act, as States are the only eligible entities capable of certifying that their E–911 charges were not diverted to other uses and capable of designating a single officer or governmental body to serve as the coordinator of implementation of E–911 services. For purposes of this program, a State includes any of the 50 United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands.

The agencies also believe that the amount of available grant funds supports limiting the applicant pool to States. While the Act authorizes a five-year grant program totaling $1.25 billion ($250 million per year), the amount appropriated, on a one-time basis, was only $43.5 million. The agencies believe that $43.5 million would not have a meaningful impact on E–911 services if the funds were divided into small grants among a large number of grantees. Therefore, we believe that limiting the applicant pool is necessary to ensure that benefits are realized, and that States are best positioned to make wise resource deployment decisions within their borders.

The agencies propose to require assurances from States in their applications to ensure adequate participation by local governments, tribal organizations, and PSAPs, consistent with the Act. Specifically, the State would be required to coordinate its application with PSAPs and to ensure that 90 percent of the grant funds would be used for the direct benefit of PSAPs. In addition, consistent with the statute, the proposed regulation would require States to identify the amount designated for the benefit of PSAPs without the capability to receive 911 calls or provide an explanation as to why such designation is not practicable.

C. Application Requirements (47 CFR 400.4)

The proposed rule outlines the requirements for States to apply for a grant under this program. In order to qualify to receive an E–911 grant, the agencies propose that States must submit an application containing the following components: a State 911 plan, a project budget, a supplementary

project budget, designation of the State E–911 Coordinator, and a certification of compliance with statutory and programmatic requirements. These components are consistent with the application requirements of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. *See* 49 CFR 18.10; Office of Management and Budget (OMB) Circular A–102.

1. State 911 Plan (47 CFR 400.4(a)(1))

The ENHANCE 911 Act requires applicants to certify that they have established a plan for the coordination and implementation of E–911 services. The agencies propose that States would submit a State 911 Plan as part of their application for a grant. As further detailed below, the minimum components of a State 911 plan would incorporate the statutory provisions related to coordination with PSAPs within the State's jurisdiction, giving priority to communities without 911 capability, and the involvement of integrated telecommunications service providers in the implementation and delivery of Phase II E–911 services or in the migration to an IP-enabled emergency network. In addition, a State 911 Plan would be required to provide details about how the State intends to employ technology to achieve compliance with the FCC description of Phase II E–911 services and/or how it intends to migrate to an IP-enabled emergency network.

The Act requires applicants to coordinate their applications with PSAPs within their jurisdiction. To address this requirement, the agencies propose that States would detail in the State 911 Plan the steps they have taken to coordinate their applications with local governments, tribal organizations, and PSAPs within their borders. We believe that requiring States to coordinate their applications with these entities will ensure that the State 911 Plan takes into account the needs of these stakeholders. To ensure that grant funds are used predominantly where their impact is most significant—in the communities—the agencies propose requiring States to demonstrate in the State 911 Plan that at least 90 percent of the grant funds will be used for the direct benefit of PSAPs.

The Act directs the agencies to allow a portion of the E–911 grant funds to be used to give priority to PSAPs that were not capable of receiving 911 as of August 3, 2007. 47 U.S.C. 942(b)(4). To effectuate this provision, the agencies propose that States would identify in their application the percentage of grant funds that will be designated for those communities. The agencies are stopping short of proposing this as an absolute requirement, however. Based on the amount of grant funds available, we recognize that such a designation may not always be practicable for efficient use of the limited funds. Therefore, if the State chooses not to so designate a portion of the funds, the State would be required to provide an explanation. The agencies believe that the States are best situated to make these difficult resource decisions.

The proposed regulation also would require that the State 911 plan describe how the State has integrated telecommunications service providers involved in the implementation and delivery of Phase II E–911 services and in the migration to an IP-enabled emergency network. 47 U.S.C. 942(b)(3)(A)(iv). The term ''integrated telecommunications service providers'' refers to local exchange carriers, wireless carriers and Internet Protocol (IP)-enabled voice service providers. It is necessary to detail how integrated telecommunications service providers are involved in the State 911 Plan because they provide essential network functions for consumer delivery of E–911 services.

The agencies also propose that States describe in the State 911 Plan how they plan to use technology to allow a PSAP to meet the functionality required by the FCC's description of Phase II E–911 services or to migrate to an IP-enabled emergency network. Such an approach is consistent with the Act's citation to 47 CFR 20.18 of the FCC's regulations for the meaning of Phase II E–911 services. 47 U.S.C. 942(f)(5). According to 47 CFR 20.18, Phase II E–911 services are described as location information of all 911 calls by longitude and latitude with a specific degree of accuracy. For States interested in using grant funds to migrate to an IP-enabled emergency network, the agencies propose that States provide details about how the State intends to employ technology toward that end.

Finally, because the level of Phase II E–911 services and IP-enabled emergency networks differs significantly from State to State, the agencies propose that States establish performance metrics and timelines for grant project implementation, subject to the ICO's review and the agencies' approval.

2. Project Budget (47 CFR 400.4(a)(2); Appendix A)

The agencies propose that a State would submit a project budget for the projects and activities that it seeks to fund with E–911 grant funds and the required State matching funds. *See* 49 CFR 18.10; OMB Circular A–102. Elsewhere in this notice, the agencies propose to distribute grant funds based on a formula. *See* discussion under Section III.E., below. Based on that proposed formula, we have identified in an appendix to this part the minimum award each State would receive if all States qualified for a grant. A State's project budget would need to account for all funds (those identified in Appendix A for the State and State matching funds) in describing the projects or activities for which it seeks funding, and describe the non-Federal sources that will fund 50 percent of the cost. The non-Federal sources must be consistent with the requirements set out in the matching provision of 49 CFR part 18, DOT's implementation of the government-wide common grant rule for State and local governments. As provided in 48 U.S.C. 1469a, the requirement for non-Federal matching funds under $200,000 (including in-kind contributions) is waived for the Territorial governments in American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands.

3. Supplemental Project Budget (47 CFR 400.4(a)(3))

It is possible that some States may choose not to apply or may not qualify for an E–911 grant because they are unable to make the required certifications. To address these contingencies, the agencies propose to distribute all remaining available funds to the pool of qualifying grant recipients, in accordance with the same formula used for the initial distribution. See discussion under Section III.E., below. In order to expedite the award of these grant funds, the agencies propose that States would include a supplemental project budget in anticipation of the potential availability of additional grant funds. Specifically, the agencies propose that States identify in their supplemental project budget the maximum amount that the State would be able to match from non-Federal sources and include proposed projects or activities for those grant and matching funds, up to the same total amount and to the same level of detail as required for the project budget under proposed § 400.4(a)(2). The agencies propose that the supplemental project budget meet the same requirements identified for the project budget in § 400.4(a)(2) and be consistent with the State 911 Plan in § 400.4(a)(1).

4. Designated E–911 Coordinator (47 CFR 400.4(a)(4); Appendix B; Appendix C)

The Act requires States to designate a single officer or governmental body to serve as the coordinator of implementation of E–911 services. 47 U.S.C. 942(b)(3)(A)(ii). To implement this provision, the agencies propose that this officer or governmental body would be designated by the Governor, and that the State would document the designation of the E–911 Coordinator by the Governor through the use of a certification. See discussion under the next heading. We are identifying the E–911 Coordinator as the proposed certifying official on the certifications. In the event that a governmental body is designated as the State's E–911 Coordinator, the agencies propose that States affirmatively identify an official representative of the governmental body to serve as the certifying official on the certifications. The agencies also propose that the State notify NHTSA in writing within 30 days of a change in appointment of the E–911 Coordinator. The E–911 Coordinator would act as the liaison between the agencies and the State.

5. Certifications (47 CFR 400.4(a)(5); Appendix B; Appendix C)

The Act requires applicants to certify that they meet certain conditions to qualify for a grant. An applicant must certify that it has: (1) Coordinated its application with the PSAPs located within the jurisdiction; (2) designated a single officer or government body to serve as the E–911 Coordinator; (3) established a plan for the coordination and implementation of E–911 services; and (4) integrated telecommunications involved in the implementation and delivery of Phase II E–911 services. 47 U.S.C. 942(b)(3). The Act also requires that applicants certify at the time of application and annually thereafter that no portion of any designated E–911 charges imposed by the State or other taxing jurisdiction within the State is being diverted for any other purpose during the period at least 180 days before the application date and continuing throughout the period of time for which grant funds are available. 47 U.S.C. 942(c). To meet these statutory requirements, the agencies propose that States submit a certification as part of their application. To meet the statutory requirement for annual certification concerning the diversion of funds, the agencies propose that States submit an annual certification 30 days after the end of each fiscal year. (In this annual certification, States would also certify that they have appointed a single officer or governmental body as the E–911 Coordinator.)

The agencies also propose that States would certify that they have coordinated their application with local governments, tribal organizations, and PSAPs, and certify that at least 90 percent of the grant funds will be used for the direct benefit of PSAPs. While these certifications go beyond those required by the statute, we believe they will help to ensure that the intent and purposes of the Act are met. Finally, as discussed under the previous heading, the agencies propose that States would certify that the Governor has appointed a single officer or governmental body to serve as the E–911 Coordinator. The agencies have set forth the proposed certifications in appendices to the NPRM.

6. Due Date (47 CFR 400.4(b))

The agencies' proposal establishes an application due date of 60 days after publication of the final rule in the **Federal Register**. This proposed date balances the need to provide the States appropriate time to prepare proposals with the agencies' need for review time prior to award, taking into account that awards must be made by September 30, 2009.

D. Approval and Award (47 CFR 400.5)

The Act established the ICO to receive, review and recommend the approval or disapproval of applications for grants. 47 U.S.C. 942(a)(3)(D). The agencies' proposal incorporates this statutory requirement, and would allow the ICO, upon review of a State's application, to request additional information from the State prior to making a determination of award in order to clarify compliance with the statutory and programmatic requirements. As provided by statute, the Administrator of NHTSA and the Assistant Secretary for Communications and Information of the Department of Commerce will jointly approve and announce grant award recipients. The proposal specifies that this approval will be in writing.

E. Distribution of Grant Funds (47 CFR 400.6; Appendix A)

The ENHANCE 911 Act does not specify how the grants are to be awarded. In order to distribute grant funds on an equitable and administratively expedient basis for this one-time grant program, the agencies propose to distribute grants to States in accordance with a formula. Specifically, the agencies propose to distribute grant funds as follows: (1) 50 percent in the ratio which the population of each State bears to the total population of all the States, as shown by the latest available Federal census, and (2) 50 percent in the ratio which the public road mileage in each State bears to the total public road mileage in all States, as shown by the latest available Federal Highway Administration data.

However, we believe that a strict application of the formula would result in many jurisdictions receiving too few funds to make any meaningful progress in deploying Phase II technologies or migrating to an IP-based emergency network. Accordingly, the agencies propose to modify the formula to distribute a minimum of $500,000 to each State, except that the four territories—American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands—would each receive a minimum of $250,000. The agencies believe that a lower minimum amount for these four territories is equitable and appropriate due to their vastly lower populations and road miles. The agencies have applied the formula to the total grant funds available ($41,325,000, after deduction of the five percent for administering the grant program) and calculated the minimum amounts that each State would receive if all States applied for and qualified for a grant award. See Appendix A to this part.

As discussed under Section III.C.3, it is possible that some States may not apply for grant funds or may not qualify for grant funds because they cannot make the required certifications. To address this possibility, the agencies propose to redistribute any remaining grant funds to those States that have qualified for grant funds and have submitted supplemental project budgets as described in proposed § 400.4(a)(3). The agencies propose to distribute these funds in accordance with the same formula discussed above.

F. Eligible Uses for Grant Funds (47 CFR 400.7)

The ENHANCE 911 Act provides that the grants are intended for the implementation and operation of Phase II E–911 services or for migration to an IP-enabled emergency network. To implement this requirement, the agencies propose that grant funds and matching funds be used either for the acquisition and deployment of hardware and software that enables compliance with Phase II E–911 services or that enables migration to an IP-enabled emergency network, or for training in the use of such hardware and software. The agencies believe that limiting grant funds to these identified uses will maximize progress toward

implementing Phase II E–911 services and IP-enabled 911 services, and would best effectuate the purposes of the Act.

G. Non-Compliance (47 CFR 400.8)

The Act requires that grant funds be returned to the government if a State makes a false certification concerning the diversion of E–911 charges. 47 U.S.C. 942(c)(4). The proposal incorporates this statutory requirement.

H. Financial and Administrative Requirements (47 CFR 400.9)

The agencies' proposal specifies that the requirements of 49 CFR part 18, DOT's implementation of the government-wide common grant rule for State and local governments, including applicable cost principles in circulars of the Office of Management and Budget, will apply to E–911 grants. In addition, the agencies propose that grant recipients submit annual performance reports and quarterly financial reports, following the procedures of 49 CFR 18.40 and 18.41, respectively.

I. Closeout (47 CFR 400.10)

The Act provides that enhanced 911 is a national priority. To effectuate the Act's intent, the agencies believe that the States should use grant funds in an expeditious manner to implement E–911 services in their communities. According to industry estimates, upgrading the average PSAP takes approximately three years. Accordingly, the agencies propose that the total duration of the grant program be three years. The agencies also propose that grant recipients submit a final voucher for costs incurred within 90 days after the completion of projects and activities funded under this part, but in no event later than three years after grant award. Finally, the proposal specifies that the final reporting requirements of 49 CFR 18.50 would apply to E–911 grants, and that any funds remaining unexpended at the end of fiscal year 2012 will no longer be available to the State and must be returned to the government.

IV. Public Participation

A. How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your primary comments must not be more than 15 pages long. 49 CFR 553.21. However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically on the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

B. How can I be sure my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

C. Will the agencies consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

D. How can I read the comments submitted by other people?

You may read the comments received by the Docket Management at the address given under **ADDRESSES**. The hours of the Docket are indicated above in the same location. To read the comments on the Internet, go to *http://www.regulations.gov.* Follow the online instructions for accessing the docket.

Please note that even after the comment closing date, we will continue to file relevant information on the docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the docket for new material.

V. Statutory Basis for This Action

The agencies' proposal would implement the grant program created by section 104 of the ENHANCE 911 Act of 2004, as amended (Pub. L. 108–494, codified at 47 U.S.C. 942), which requires the Administrator and the Assistant Secretary to issue joint implementing regulations prescribing the criteria for grant awards.

VI. Regulatory Analyses and Notices

A. Executive Order 12866 and Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review,'' provides for making determinations whether a regulatory action is ''significant'' and therefore subject to OMB review and to the requirements of the Executive Order. 58 FR 51735, Oct. 4, 1993. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed by the Office of Management and Budget under Executive Order 12866. The rulemaking action is not considered to be significant within the meaning of Executive Order 12866 or the agencies' regulatory policies and procedures.

The agencies' proposal would not affect amounts over the significance threshold of $100 million each year. The proposal sets forth application procedures and showings to be made to be eligible for a grant. The funds to be distributed under the procedures developed in the proposal total $43.5 million, well below the annual threshold of $100 million. The agencies' proposal would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. The agencies' proposal would not create an inconsistency or interfere with any actions taken or planned by other agencies. The agencies' proposal would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Finally, the agencies' proposal would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

In consideration of the foregoing, the agencies have determined that if it is made final, this rulemaking action would not be economically significant. The impacts of the rule would be so minimal that a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). 5 U.S.C. 601 *et seq*. The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' 13 CFR 121.105(a). No regulatory flexibility analysis is required if the head of an agency certifies the rulemaking action would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that an action would not have a significant economic impact on a substantial number of small entities.

NHTSA and NTIA have considered the effects of this proposal under the Regulatory Flexibility Act. States are the recipients of funds awarded under the section 2010 program and they are not considered to be small entities under the Regulatory Flexibility Act. Therefore, we certify that this notice of proposed rulemaking would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

Executive Order 13132, ''Federalism,'' requires NHTSA and NTIA 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.'' 64 FR 43255, Aug. 10, 1999. ''Policies that have federalism implications'' are 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.'' Under Executive Order 13132, an agency may not issue a regulation with 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 the agency consults with State and local governments in the process of developing the proposed regulation. An agency also may not issue a regulation with Federalism implications that preempts a State law without consulting with State and local officials.

The agencies have analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132, and have determined that this proposed rule would not have Federalism implications as defined in the order.

D. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ''Civil Justice Reform,'' the agencies have considered whether this rulemaking would have any retroactive effect. 61 FR 4729, Feb. 7, 1996. This rulemaking action would not have any retroactive effect. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This NPRM, if made final, would result in a new collection of information that would require OMB clearance pursuant to 5 CFR part 1320. Before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, the agencies ask for public comments on the following proposed collections of information:

Title: E–911 Grant Program.

OMB Control Number: N/A

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: New collection.

Affected Public: State Governments

Form Number: N/A

Abstract: The Ensuring Needed Help Arrives Near Callers Employing 911 (ENHANCE 911) Act of 2004 (Pub. L. 108–494, codified at 47 U.S.C. 942) authorizes a joint grant program between the National Highway Traffic Safety Administration (NHTSA) of the U.S. Department of Transportation and the National Telecommunications and Information Administration (NTIA) of the Department of Commerce to facilitate coordination among all parties involved in the organization of E–911 services.

The Act requires an applicant to certify to several conditions in its application in order to qualify for a grant. Specifically, an applicant must certify that (1) it has coordinated its application with the public safety answering points (PSAP's); (2) it has designated a single officer or governmental body to serve as the coordinator of implementation of E–911 services; (3) it has established a plan for the coordination of and implementation of E–911 services; (4) it has integrated telecommunications services involved in the implementation of E–911 services; and (5) no portion of any designated E–911 charges imposed by the State or other taxing jurisdiction within the State is being diverted for any other purpose during the period at least 180 days before the application date and continuing throughout the period of time for which grant funds are available. In addition, the Act requires grantees to match at least 50 percent from non-Federal sources.

The information collected for this grant program is to include an application consisting of a State 911 Plan, project budget information and certifications. This information is necessary to determine whether a State satisfies the criteria for a grant award.

In a **Federal Register** document published on March 11, 2008, NHTSA sought public comment on a proposed collection of information for the E–911

grant program. *See* 73 FR 13068. In that notice, NHTSA inadvertently identified HS–217 (Highway Safety Program Cost Summary) for submission in the application instead of SF–424 (Application for Federal Assistance), including SF–424a and SF–424b, which have been approved by OMB. The agencies intend to use the SF–424 forms as part of the application for the E–911 grant program. Accordingly, the agencies are not required to obtain OMB approval for the use of these forms.

A State must also submit a State 911 Plan as part of its application. This plan must detail the projects and activities proposed to be funded for the implementation of Phase II E–911 services or migration to an IP-enabled emergency network, establish metrics and a time table for grant implementation, and describe the steps that the State has take to meet the grant criteria. It is important for the agencies to review each applicant's plan to confirm that the applicant has met certain statutory requirements—a plan for the coordination of and implementation of E–911 services, coordination of its application with PSAPs, involvement of integrated telecommunications services in the implementation of E–911 services, and priority funding to communities without 911 capability.

Estimated Annual Burden: 2240 hours (for State 911 plans).

Estimated Number of Respondents: 56 (50 States, District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands).

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agencies, including whether the information will have practical utility; the accuracy of the agencies' estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Comments must refer to the docket and notice numbers cited at the beginning of this NPRM and be submitted to one of the addresses identified at the beginning of this NPRM.

F. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This proposed rule would not meet the definition of a Federal mandate because the resulting annual State expenditures would not exceed the $100 million threshold. The program is voluntary and States that choose to apply and qualify would receive grant funds.

G. National Environmental Policy Act

NHTSA and NTIA have reviewed this rulemaking action for the purposes of the National Environmental Policy Act. The agencies have determined that this proposal would not have a significant impact on the quality of the human environment.

H. Executive Order 13175 (Consultation and Coordination With Indian Tribes)

The agencies have analyzed this proposed rule under Executive Order 13175, and have determined that the proposed action would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

I. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

J. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register**. 65 FR 19477, Apr. 11, 2000.

List of Subjects in 47 CFR Part 400

Grant programs, Telecommunications, Emergency response capabilities (911).

In consideration of the foregoing, the National Highway Traffic Safety Administration, Department of Transportation, and the National Telecommunications and Information Administration, Department of Commerce propose to establish a new Chapter IV consisting of Part 400 in Title 47 of the Code of Federal Regulations to read as follows:

CHAPTER IV—NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, DEPARTMENT OF COMMERCE, AND NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 400—E–911 GRANT PROGRAM

Sec.

Authority: 47 U.S.C. 942.

§ 400.1 Purpose.

This part establishes uniform application, approval, award, financial and administrative requirements for the grant program authorized under the ''Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004'' (ENHANCE 911 Act), as amended.

§ 400.2 Definitions.

As used in this part—

Administrator means the Administrator of the National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

Assistant Secretary means the Assistant Secretary for Communications and Information, U.S. Department of Commerce, and Administrator of the National Telecommunications and Information Administration (NTIA).

Designated E–911 charges mean any taxes, fees, or other charges imposed by a State or other taxing jurisdiction that are designated or presented as dedicated to deliver or improve E–911 services.

E–911 Coordinator means a single officer or governmental body of the State that is responsible for implementing E–911 services in the State.

E–911 services mean both phase I and phase II enhanced 911 services, as described in 47 CFR 20.18.

Eligible entity means a State or local government or tribal organization,

including public authorities, boards, commissions, and similar bodies created by such governmental entities to provided E–911 services.

ICO means the National E–911 Implementation Coordination Office established under 47 U.S.C. 942 for the administration of the E–911 grant program, located at the National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., NTI–140, Washington, DC 20590.

IP-enabled emergency network means an emergency communications network based on an infrastructure allowing secured transmission of data among computers that use the Internet Protocol.

Phase II E–911 services mean phase II enhanced 911 services, as described in47 CFR 20.18.

PSAP means a public safety answering point, a facility that has been designated to receive emergency calls and route them to emergency personnel.

State includes any State of the United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands.

§ 400.3 Who may apply.

In order to apply for a grant under this part, an applicant must be a State applying on behalf of all eligible entities within its jurisdiction.

§ 400.4 Application requirements.

(a) *Contents.* A State's application for funds for the E–911 grant program must consist of the following components:

(1) *State 911 Plan.* A plan that details the projects and activities proposed to be funded for the implementation and operation of Phase II E–911 services or migration to an IP-enabled emergency network, establishes metrics and a time table for grant implementation, and describes the steps the State has taken to—

(i) Coordinate its application with local governments, tribal organizations, and PSAPs within the State;

(ii) Ensure that at least 90 percent of the grant funds will be used for the direct benefit of PSAPs;

(iii) Give priority to communities without 911 capability as of August 3, 2007 to establish Phase II coverage by identifying the percentage of grant funds designated for those communities or providing an explanation why such designation would not be practicable in successfully accomplishing the purposes of the grant;

(iv) Involve integrated telecommunications services in the implementation and delivery of Phase II E–911 services or in the migration to an IP-enabled emergency network; and

(v) Employ the use of technologies to achieve compliance with Phase II E–911 services or for migration to an IP-enabled emergency network.

(2) *Project budget.* A project budget for all proposed projects and activities to be funded by the grant funds identified for the State in Appendix A to this part and matching funds. Specifically, for each project or activity, the State must:

(i) Demonstrate that the project or activity meets the eligible use requirement in § 400.7; and

(ii) Identify the non-Federal sources, which meet the requirements of49 CFR 18.24, that will fund at least 50 percent of the cost; except that as provided in 48 U.S.C. 1469a, the requirement for non-Federal matching funds (including in-kind contributions) is waived for American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands for grant amounts up to $200,000.

(3) *Supplemental project budget.* To be eligible for additional grant funds that may become available in accordance with § 400.6, a State must submit, with its application, a supplemental project budget that identifies the maximum dollar amount the State is able to match from non-Federal sources meeting the requirements of 49 CFR 18.24, and includes projects or activities for those grant and matching amounts, up to the total amount in the project budget submitted under paragraph (a)(2) of this section. This information must be provided to the same level of detail as required under paragraph (a)(2) of this section and be consistent with the State 911 Plan required under paragraph (a)(1) of this section.

(4) *Designated E–911 Coordinator.* The identification of a single officer or government body appointed by the Governor of the State to serve as the E–911 Coordinator of implementation of E–911 services and to sign the certifications required under this part. If the Governor appoints a governmental body to serve as the E–911 Coordinator, an official representative of the governmental body shall be identified to sign the certifications for the E–911 Coordinator. The State must notify NHTSA in writing within 30 days of any change in appointment of the E–911 Coordinator.

(5) *Certifications.*

(i) The certification in Appendix B to this part, signed by the E–911 Coordinator, certifying that the State has complied with the required statutory and programmatic conditions in submitting its application, including that the State and all other taxing jurisdictions within the State have not, during the time period 180 days preceding the application date, diverted any portion of designated E–911 charges imposed by the State or any other taxing jurisdiction within the State to any purpose other than the purposes for which such charges are designated, and will not do so throughout the time period during which grant funds are available.

(ii) Submitted on an annual basis 30 days after the end of each fiscal year during which grant funds are available, the certification in Appendix C to this part, signed by the E–911 Coordinator, making the same certification as required under paragraph (a)(5)(i) of this section concerning the diversion of designated E–911 charges.

(b) *Due date.* The State must submit the application documents identified in this section so that they are received by the ICO no later than 60 days after publication of the Final Rule in the **Federal Register**. Failure to meet this deadline will preclude the State from receiving consideration for an E–911 grant award.

§ 400.5 Approval and award.

(a) The ICO will review each application for compliance with the requirements of this part.

(b) The ICO may request additional information from the State, with respect to any of the application submission requirements of § 400.4, prior to making a determination of award.

(c) The Administrator and Assistant Secretary will jointly approve and announce, in writing, grant awards to qualifying States no later than September 30, 2009.

§ 400.6 Distribution of grant funds.

(a) *Initial distribution.* Subject to paragraph (b) of this section, grant funds for each State that meets the requirements in § 400.4 will be distributed—

(1) 50 percent in the ratio which the population of the State bears to the total population of all the States, as shown by the latest available Federal census; and

(2) 50 percent in the ratio which the public road mileage in each State bears to the total public road mileage in all States, as shown by the latest available Federal Highway Administration data.

(b) *Minimum distribution.* The distribution to each qualifying State under paragraph (a) of this section shall not be less than $500,000, except that the distribution to American Samoa, Guam, the Northern Mariana Islands,

and the U.S. Virgin Islands shall not be less than $250,000.

(c) *Supplemental distribution.* Grant funds that are not distributed under paragraph (a) of this section will be redistributed among qualifying States that have met the requirements of § 400.4, including the submission of a supplemental project budget as provided § 400.4(a)(3), in accordance with the formula in paragraph (a) of this section.

§ 400.7 Eligible uses for grant funds.

Grant funds awarded under this part may be used only for the acquisition and deployment of hardware and software that enables the implementation and operation of Phase II E–911 services, for the acquisition and deployment of hardware and software to enable the migration to an IP-enabled emergency network, or for the training in the use of such hardware and software, provided such uses have been identified in the State 911 Plan.

§ 400.8 Non-compliance.

In accordance with 49 U.S.C. 942(c), where a State provides false or inaccurate information in its certification related to the diversion of E–911 charges, the State shall be required to return all grant funds awarded under this part.

§ 400.9 Financial and administrative requirements.

(a) *General.* The requirements of 49 CFR part 18, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, including applicable cost principles referenced at 49 CFR 18.22, govern the implementation and management of grants awarded under this part.

(b) *Reporting requirements.*

(1) *Performance reports.* Each grant recipient shall submit an annual performance report to NHTSA, following the procedures of 49 CFR 18.40, within 90 days after each fiscal year that grant funds are available, except when a final report is required under § 400.10(b)(ii).

(2) *Financial reports.* Each grant recipient shall submit quarterly financial reports to NHTSA, following the procedures of 49 CFR 18.41, within 30 days after each fiscal quarter that grant funds are available, except when a final voucher is required under § 400.10(b)(i).

§ 400.10 Closeout

(a) *Expiration of the right to incur costs.* The right to incur costs under this part expires on September 30, 2012. The State and its subgrantees and contractors may not incur costs for Federal reimbursement past the expiration date.

(b) *Final submissions.* Within 90 days after the completion of projects and activities funded under this part, but in no event later than the expiration date identified in paragraph (a) of this section, each grant recipient must submit—

(i) A final voucher for the costs incurred. The final voucher constitutes the final financial reconciliation for the grant award.

(ii) A final report to NHTSA, following the procedures of 49 CFR 18.50(b).

(c) *Disposition of unexpended balances.* Any funds that remain unexpended by the end of fiscal year 2012 shall cease to be available to the State and shall be returned to the government.

Appendix A to Part 400

MINIMUM GRANT AWARDS AVAILABLE TO QUALIFYING STATES

State name	Minimum E–911 grant award
Alabama	$686,230.25
Alaska	500,000.00
American Samoa	250,000.00
Arizona	627,067.26
Arkansas	594,060.05
California	2,841,352.77
Colorado	662,637.98
Connecticut	500,000.00
Delaware	500,000.00
District of Columbia	500,000.00
Florida	1,579,728.30
Georgia	1,063,089.13
Guam	250,000.00
Hawaii	500,000.00
Idaho	500,000.00
Illinois	1,343,670.10
Indiana	783,700.36
Iowa	668,545.47
Kansas	770,896.23
Kentucky	584,385.38
Louisiana	511,974.11
Maine	500,000.00
Maryland	500,000.00
Massachusetts	527,000.57
Michigan	1,108,704.89
Minnesota	874,841.32
Mississippi	500,000.00
Missouri	891,711.03
Montana	500,000.00
Northern Mariana Islands	250,000.00
Nebraska	508,655.45
Nevada	500,000.00
New Hampshire	500,000.00
New Jersey	666,876.13
New Mexico	500,000.00
New York	1,603,343.25
North Carolina	971,280.91
North Dakota	500,000.00
Ohio	1,203,583.60
Oklahoma	700,339.78
Oregon	500,000.00
Pennsylvania	1,242,455.97
Puerto Rico	500,000.00
Rhode Island	500,000.00
South Carolina	541,705.79
South Dakota	500,000.00
Tennessee	751,822.46
Texas	2,702,727.44
Utah	500,000.00
Vermont	500,000.00
Virgin Islands	250,000.00
Virginia	758,028.12
Washington	734,176.40
West Virginia	500,000.00
Wisconsin	820,409.48
Wyoming	500,000.00
Total Available E–911 Grant Funds	41,325,000.00

BILLING CODE 4910–59–P

APPENDIX B

CERTIFICATION FOR E-911 GRANT APPLICANTS

I. On behalf of _____, I, _____,
[*State or Territory*] [*print name*]
hereby certify that:

(check **all** boxes below)

☐ The Governor of _____ has designated
[*State or Territory*]

(check **only one** circle below)

o me as the State's single officer to serve as the E-911 Coordinator of E-911 services implementation; or

o _____ as the State's single governmental body, [*identify governmental body*] to serve as the E-911 Coordinator of E-911 services implementation, and I am its representative.

☐ The State has coordinated the application with local governments, tribal organizations and PSAPs within the State.

☐ The State has established a State 911 Plan, consistent with the implementing regulations, for the coordination and implementation of E-911 services.

☐ The State will ensure that at least 90 percent of the grant funds for the direct benefit of PSAPs.

☐ The State has integrated telecommunications services involved in the implementation and delivery of Phase II E-911 services.

☐ The State will provide at least 50 percent of the cost of each project funded under this grant from non-Federal sources (if applicable).

II. I further certify that neither the State nor any taxing jurisdiction within the State has diverted any portion of designated E-911 charges imposed by the State or taxing jurisdiction within the State for any purpose other than the purposes for which such charges are designated or presented from the time period 180 days preceding the date of the application and continuing throughout the time period during which grant funds are available. I agree that, as a condition of receipt of the grant, the State will return all grant funds if the State or any taxing jurisdiction within the State obligates or expends, at any time for the full duration of this grant, designated E-911 charges for any purpose other than the purposes for which such charges are designated or presented.

III. I further certify that the State will comply with all applicable laws and regulations, financial and programmatic requirements for Federal grants.

_____ _____

Signature of State E-911 Coordinator (or representative of single governmental body)

Date

_____

Title

APPENDIX C

ANNUAL CERTIFICATION FOR E-911 GRANT RECIPIENTS

On behalf of _____, I, _____,
[*State or Territory*] [*print name*]

hereby certify that:

(check **all** boxes below)

☐ The Governor of _____ has designated
[*State or Territory*]

(check **only one** circle below)

o me as the State's single officer to serve as the E-911 Coordinator of E-911 services implementation; or

o _____ as the State's single governmental body, [*identify governmental body*] to serve as the E-911 Coordinator of E-911 services implementation, and I am its representative.

☐ Neither the State and nor any taxing jurisdiction within the State has diverted any portion of designated E-911 charges imposed by the State or taxing jurisdiction within the State for any purpose other than the purposes for which such charges are designated or presented from 180 days preceding the date of the application and continuing through the period in which grant funds are available. I agree that, as a condition of receipt of the grant, the State will return all grant funds if the State or any taxing jurisdiction within the State obligates or expends, at any time for the full duration of this grant, designated E-911 charges for any purpose other than the purposes for which such charges are designated or presented.

_____ _____
Signature of State E-911 Coordinator (or representative of single governmental body) Date

_____
Title

Issued on: September 29, 2008.

David Kelly,

Acting Administrator, National Highway Traffic Safety Administration.

Meredith Attwell Baker,

Acting Assistant Secretary for Communications and Information.

[FR Doc. E8–23266 Filed 10–2–08; 8:45 am]

BILLING CODE 4910–59–C

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 515, and 552

[GSAR Case 2008–G506; Docket 2008–0007; Sequence 23]

RIN 3090–AI76

General Services Acquisition Regulation; GSAR Case 2008–G506; Rewrite of GSAR Part 515, Contracting by Negotiation

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to revise language that provides requirements for contracting by negotiation.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before December 2, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR Case 2008–G506 by any of the following methods:

- Regulations.gov: *http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by inputting ''GSAR Case 2008–G506'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with GSAR Case 2008–G506. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''GSAR Case 2008–G506'' on your attached document.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2008–G506 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT For clarification of content, contact Mr. Michael O. Jackson at (202) 208–4949. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite GSAR Case 2008–G506.

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to revise sections of GSAR part 515 that provide requirements for contracting by negotiation.

This rule is a result of the General Services Administration Acquisition Manual (GSAM) Rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the FAR and to implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

GSA will rewrite each part of the GSAR and GSAM, and as each GSAR part is rewritten, will publish it in the **Federal Register**.

This rule covers the rewrite of GSAR Part 515. The specific changes are as follows:

- GSAR 501.106 - Added Control Number 3090–0163 as a cross reference for 515.201–1.
- GSAR 515.204—Added a paragraph to specify that the senior procurement executive is the designee per FAR 15.204(e).
- GSAR 515.204–1—Moved paragraph (a) to 515.204. Renumbered remaining paragraphs and references accordingly.
- GSAR 515.205—Added ''or unless the incumbent contractor is otherwise ineligible for the award'' to advise contracting officers that they are not obligated to include an offeror in the competition if they are not eligible to compete.
- GSAR 515.209–70, Examination of records by GSA clause—

a. In paragraph (b), changed ''You'' to ''The contracting officer'' eliminated the dashes in ''Assistant Inspector General-Auditing'' and ''Regional Inspector General-Auditing''; and replaced each dash with a ''for''; and

b. Paragraphs (c) and (d) were trasferred to Part 538 because they only pertain to Federal Supply Schedule (FSS) Multiple Award Schedule (MAS).

- 515.305, Proposal evaluation—

a. Transferred paragraph (a), renumbered it 515.208–70 and made it non-regulatory;

b. Transferred paragraph (b), renumbered it 515.305–71 and made it non-regulatory;

c. Made 515.305–70 non-regulatory; and

d. The text made non-regulatory and renumbered to 515.208–70 and 515.305–71, as well as the text that was formerly regulatory at 515.305–70, the team decided that it did not affect the public and was only applicable internally to GSA.

- 515.408, Solicitation provisions and contract clauses—Transferred to GSAM Part 538 because it is only applicable to the Multiple Award Schedules Program. This proposed revision also includes the CSP–1 form.
- 515.7002, Procedures—

a. Replaced ''You'' with ''Contracting Officer'' throughout the clause. Also changed ''Base your determination'' to ''This determination should be based'';

b. In paragraph (a) changed FAR reference ''14.202–4(g)'' to ''14.202–4(f)'' and changed ''However, qualifications'' to ''Samples are not requested. Any samples submitted with''. This is to include minor editorial changes suggested by the Advanced Notice of Public Rulemaking; and

c. In paragraph (b)(1) deleted ''52.214–20'' and replaced it with ''552.214–72''. Deleted the remainder of the paragraph.

- 552.215–71—Transferred to Part 538 because of the proposed move in 515.209–70(c) and (d).
- 552.215–72—Transferred to Part 538 because of the proposed move in 515.408.

As a result of the rewrite of GSAM Part 515, certain text and clauses such as 552.215–71, Examination of Records by GSA (Multiple Award Schedule), and 552.215–72, Price Adjustment—Failure to Provide Accurate Information, were transferred to the GSAM rewrite team handling the rewrite of GSAM Part 538. The 538 team was assembled with GSA personnel who have experience in dealing with GSAM Part 538, including personnel from GSA's Federal Acquisition Service, which is the GSA component responsible for GSA's Multiple Award Schedules. GSA established a process in the rewrite initiative where text and clauses that were found more suited to be allocated to other parts of the GSAM were sent to the other rewrite teams for their analysis and incorporation into their assigned rewrite parts.

Discussion of Comments

Nine comments covering Part 515 were received in response to the Advanced Notice of Proposed Rulemaking published in the **Federal Register** at 71 FR 7910, February 15, 2006. A discussion of these comments is provided below:

1. *Comment*: One commenter focused on the GSAR 552.238–75, Price Reductions (currently May 2004) clause, the Commercial Sales Practices Format (CSPF) in GSAR 515.408, and the Figure 515.4 Instructions that accompany them.

Response: This comment was transferred to the GSAM part 538 rewrite team.

2. *Comment*: Another commenter believes there is value in consistency—a greater likelihood of driving fair prices among all contracts for a type of product or service. One area for consistency is in the data collected in CSPF charts. GSA's sample format does a commendable job toward that goal but can be improved.

Response: This comment was transferred to the GSAM part 538 rewrite team.

3. *Comment*: GSAR should resolve how the requirement to annually update the Central Contractor Registration (CCR) impacts the position that small business size status is as of the time the offer is submitted. The commenter recommends that GSAR prescribe language to insert in GSA Schedule price lists on this topic. The language would inform agencies that notwithstanding data in CCR, for purposes of ordering against the schedule a contractor is small for the 5 year period of the schedule contract. Schedule contractors are required to recertify size status at the time of a renewal.

Response: This comment was transferred to the GSAM part 538 rewrite team.

4. *Comment*: Section 515.305(d)(1) of the GSAM discusses the requirement of using (''must use'') PPIRS (Past Performance Information Retrieval System). It goes on to say that a contracting officer ''may use'' questionnaires tailored to the circumstances, interviews, and other sources. On the other hand, FAR Part 15.203(3) specifically indicates what past performance evaluations ''shall address.'' This includes contractor's record of conforming to contract requirements and to standards of good workmanship; contractor's record of forecasting and controlling costs; contractor's adherence to contract schedules, including administrative aspects of performance; contractor's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, contractor's business-like concern for interest of the customer. Additionally, FAR 9.105–1 and 42.15 provide steps to conducting past performance survey, including checking List of Parties Excluded from Federal Procurement and Non-Procurement Programs, reviewing previous pre-award survey reports, and requesting information from other government offices. The FAR seems to be substantially more specific in nature than the GSAM.

Response: PPIRS is a government wide system intended to supplement past performance evaluations. The use of PPIRS as directed by GSAM does not replace the requirement to follow the guidance in the applicable parts of the FAR regarding past performance evaluations. We also note that the FAR does not contain 15.203(3), as referenced in the commenter's comment.

5. *Comment*: 515.403–4, Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b) - To determine if a contract action meets the threshold at FAR 15.403–4 for requesting cost and pricing data, consider the value of the action plus any priced options. Exercise of a priced option is not a price adjustment and does not require submission of cost and pricing data. GSAR should be revised to state what the threshold is.

Response: Do not concur. The FAR specifies the threshold.

6. *Comment*: 515.306, Exchanges with offerors after receipt of proposals. Limit access to Government cost estimates to Government personnel whose official duties require knowledge of the estimate. During negotiations, you may disclose part or all of the Government estimate under FAR 15.306(e) when necessary to arrive at a fair and reasonable price. After award, you may reveal the total amount of the independent Government estimate. More information should be included to explain the various types of exchanges that can be conducted with offerors.

Response: Do not concur. FAR 15.306(e) only places limits on exchanges. It is up to the contracting officer to use their discretion based on the exceptions cited in the FAR to determine the content of any exchanges with offerors.

7. *Comment*: Appendix 515A—Source Selection Procedures (This Appendix will replace GSA Order, Source Selection Procedures (APD P 2800.2)). The source selection procedures are being updated based on the FAR Part 15 rewrite. Would be greatly beneficial to see this section completed.

Response: Concur. Comment is taken under advisement.

8. *Comment*: Clarify and revise the Commercial Sales Practices Format, including simplifying the provision and removing those requirements associated with the mechanism that represents the pricing relationship between the Government and the basis of award customer (or category of customers) that pose undue administrative burden.

Response: The Commercial Sales Practices format will be addressed in GSAM 538.

9. *Comment*: Revise the GSAR to address the procurement practice known as ''reverse auctions''. While GSA supports innovative competitive techniques, GSA is concerned about the implication that auction techniques should be required even to the extent practicable, for the purchase of commercial items, and in particular not all commercial services, lend themselves to the ''price only'' bidding used in auction and reverse auction techniques.

Response: Office of Federal Procurement Policy (see memo, ''Government-wide Survey on the Use of Reverse Auctions'', dated November 27, 2007) has initiated a review of the government's use of commercially available online procurement services, including reverse auctions. Based on their findings GSA may consider including guidance in the GSAR.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are not considered substantive. The revisions only update and reorganize existing coverage. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. GSA will consider comments from small entities concerning the affected GSAR Parts 501, 515, and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR case 2008–G506), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 3090–0027.

List of Subjects in 48 CFR Parts 501, 515, and 552

Government procurement.

Dated: September 19, 2008.

Edward C. Loeb,

Deputy Director, Office of Acquisition Policy.

Therefore, GSA proposes to amend 48 CFR parts 501, 515, and 552 as set forth below:

1. The authority citation for 48 CFR parts 501, 515, and 552 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

501.106 [Amended]

2. Amend section 501.106, in the table, by adding in numerical sequence, GSAR Reference ''515.201–1'' and its corresponding OMB Control Number ''3090–0163''.

3. Revise Part 515 to read as follows:

PART 515—CONTRACTING BY NEGOTIATION

Subpart 515.2—Solicitation and Receipt of Proposals and Information

Sec.

Subpart 515.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

Subpart 515.70—Use of Samples

Subpart 515.2—Solicitation and Receipt of Proposals and Information

515.204 Contract format.

(a) The uniform contract format is not required for leases of real property.

(b) The Senior Procurement Executive is the agency head's designee for the purposes of granting exemptions to the use of the Uniform Contract Format (see FAR 15.204(e)).

515.204–1 Uniform contract format.

Each solicitation and contract must include the two notices in paragraphs (a) and (b) of this subsection, except that acquisitions of leasehold interests in real property, must include only the notice in paragraph (a).

(a) The information collection requirements contained in this solicitation/contract are either required by regulation or approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act and assigned OMB Control No. 3090–0163.

(b) GSA's hours of operation are 8:00 a.m. to 4:30 p.m. Requests for preaward debriefings postmarked or otherwise submitted after 4:30 p.m. will be considered submitted the following business day. Requests for postaward debriefings delivered after 4:30 p.m. will be considered received and filed the following business day.

515.205 Issuing solicitations.

Potential sources, as used in FAR 15.205, include both of the following:

(a) The incumbent contractor, except when its written response to the notice of contract action under FAR Subpart 5.2 states a negative interest or unless the incumbent contractor is otherwise ineligible for the award.

(b) Offerors that responded to recent solicitations for the same or similar items.

515.209 Solicitation provisions and contract clauses.

515.209–70 Examination of records by GSA clause.

Clause for Other than Multiple Award Schedules

(a) For other than multiple award schedule (MAS) contracts, insert the clause at 552.215–70, Examination of Records by GSA, in solicitations and contracts over $100,000, including acquisitions of leasehold interests in real property, that meet any of the conditions listed below:

(1) Involve the use or disposition of Government-furnished property.

(2) Provide for advance payments, progress payments based on cost, or guaranteed loan.

(3) Contain a price warranty or price reduction clause.

(4) Involve income to the Government where income is based on operations under the control of the contractor.

(5) Include an economic price adjustment clause where the adjustment is not based solely on an established, third party index.

(6) Are requirements, indefinite-quantity, or letter type contracts as defined in FAR Part 16.

(7) Are subject to adjustment based on a negotiated cost escalation base.

(8) Contain the provision at FAR 52.223–4, Recovered Material Certification.

(b) The contracting officer may modify the clause at 552.215–70 to define the specific area of audit (*e.g.*, the use or disposition of Government-furnished property, compliance with the price reduction clause). Counsel and the Assistant Inspector General for Auditing or Regional Inspector General for Auditing, as appropriate, must concur in any modifications to the clause.

(c) *Solicitation notice.* Include in the solicitation a notice substantially as follows:

Notice About Releasing Proposals

(1) The Government intends to disclose proposals received in response to this solicitation to nongovernment evaluators.

(2) Each evaluator will sign and provide to GSA a ''Conflict of Interest Acknowledgment and Nondisclosure Agreement.''

Subpart 515.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

515.506 Postaward debriefing of offerors.

For purposes of determining the date of receipt of a request for a postaward debriefing, GSA's hours of operation are 8:00 a.m. to 4:30 p.m. Requests received after 4:30 p.m. will be considered received the following business day.

Subpart 515.70—Use of Samples

515.7002 Procedures.

(a) *Unsolicited samples.* The reference to FAR 14.404–2(d) in FAR 14.202–4(f) does not apply. Use the following when contracting by negotiation: ''Samples are not requested. Any samples submitted with the proposal that are at variance with the Government's requirements, constitute deficiencies. Resolve these as provided in FAR 15.306.''

(b) *Solicitation requirements.* (1) Use the clause at GSAR 552.214–72.

(2) In addition to listing subjective characteristics that cannot adequately be described in the specification, the contracting officer may list and evaluate objective characteristics. To include objective characteristics, the contracting officer must determine that examination of such characteristics is essential to the acquisition of an acceptable product. This determination should be based on past experience or other valid considerations.

(c) FAR 52.215–1(c)(3) applies to samples received after the time set for receipt of offers.

PART 552–SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.215–71 [Redesignated as 552.238–XX]

552.215–72 [Redesignated as 552.238–YY]

4. Sections 552.215–71 and 552.215–72 are redesignated as 552.238–XX and 552.238–YY, respectively.

[FR Doc. E8–22745 Filed 10–2–08; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 0809161218–81253–01]

RIN 0648–AX23

Listing Endangered and Threatened Wildlife and Designating Critical Habitat; 90–day Finding for a Petition to Revise the Critical Habitat Designation for the Hawaiian Monk Seal

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

ACTION: Notice of petition finding; request for information and comments.

SUMMARY: We, the National Marine Fisheries Service (NMFS), announce a 90–day finding for a petition to revise Hawaiian monk seal (*Monachus schauinslandi*) critical habitat under the Endangered Species Act (ESA) of 1973, as amended. The Hawaiian monk seal is listed as endangered throughout its range, and currently designated critical habitat consists of all beach areas, sand spits, and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 20 fathoms (36.6m) around specific areas in the Northwestern Hawaiian Islands. The petition seeks to include key beach areas, sand spits, and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 200 meters around the main Hawaiian Islands, and to extend critical habitat designation in the Northwestern Hawaiian Islands to Sand Island and ocean waters out to a depth of 500 meters. We are initiating a review of currently designated critical habitat of the species to determine whether revision is warranted. To ensure a comprehensive review, we solicit information and comments pertaining to this species' essential habitat needs from any interested party.

DATES: Written comments and information related to this petition finding must be received [see ADDRESSES] by December 2, 2008.

ADDRESSES: You may submit comments, identified by [0648–AX23], by any one of the following methods: (1) Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov*; (2) Fax: 808–973–2941, attention: Krista Graham; or (3) mail: addressed to Krista Graham, National Marine Fisheries Service, Pacific Islands Regional Office, Protected Resources Division, 1601 Kapiolani Boulevard Suite 1110, Honolulu, HI 96814.

All comments received are a part of the public record and will generally be posted to *httphttp://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 (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Interested persons may obtain more information about critical habitat designated for the Hawaiian monk seal online at the NMFS Pacific Islands Regional Office website: *http://www.fpir.noaa.gov/PRD/prd__critical__habitat.html*

FOR FURTHER INFORMATION CONTACT: Krista Graham by phone 808–944–2238, fax 808–973–2941, or e-mail *krista.graham@noaa.gov*; Lance Smith by phone 808–944–2258, fax 808–973–2941, or e-mail *lance.smith@noaa.gov*; Lisa Van Atta by phone 808–944–2257, fax 808–973–2941, or e-mail *alecia.vanatta@noaa.gov*; or Marta Nammack by phone 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

Critical habitat is defined in the ESA (16 U.S.C. 1531 *et seq.*) as:

''(i) the specific areas within the geographical area currently occupied by the species, at the time it is listed... on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species.''

Our implementing regulations (50 CFR 424.12) describe those essential physical and biological features to include, but not limited to: (1) space for individual and population growth, and normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distribution of a species. We are required to focus on the primary constituent elements (PCEs) which best represent the principal biological or physical features. PCEs may include, but are not limited to: nesting grounds, feeding sites, water quality, tide, and geological formation. Our implementing regulations (50 CFR 424.02) define ''special management considerations or protection'' as any method or procedure useful in protecting physical and biological features of the environment for the conservation of the species.

Section 4(b)(2) of the ESA requires us to designate and make revisions to critical habitat for listed species based on the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any particular area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines that the failure to designate such area as critical habitat will result in the extinction of the species concerned. We are required to consider whether the petition contains information indicating that areas petitioned contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species. Section 4(b)(3)(D)(i) of the ESA requires us to make a finding as to whether a petition to revise critical habitat presents substantial scientific information indicating that the revision may be warranted. Our implementing regulations (50 CFR 424.14) define ''substantial information'' as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In determining whether substantial information exists, we take into account several factors, including

information submitted with, and referenced in, the petition and all other information readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If we find that a petition presents substantial information indicating that the revision may be warranted, within 12 months after receiving the petition, we are required to determine how we intend to proceed with the requested revision and promptly publish notice of such intention in the **Federal Register**. See ESA Section 4(b)(3)(D)(ii).

Analysis of Petition

On July 9, 2008, we received a petition from the Center for Biological Diversity, Kahea, and the Ocean Conservancy (Petitioners) to revise the Hawaiian monk seal critical habitat designation (Center for Biological Diversity *et al.*, 2008). Currently designated critical habitat consists of all beach areas, sand spits, and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 20 fathoms (36.6m) around the following areas in the Northwestern Hawaiian Islands: Kure Atoll; Midway Islands, except Sand Island and its harbor; Pearl and Hermes Reef; Lisianski Island; Laysan Island; Maro Reef; Gardner Pinnacles; French Frigate Shoals; Necker Island; and Nihoa Island (53 FR 18988; May 26, 1988). The Petitioners seek to revise the critical habitat designation to include key beach areas, sand spits, and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 200 meters around the main Hawaiian Islands, and to extend critical habitat designation in the Northwestern Hawaiian Islands to Sand Island and ocean waters out to a depth of 500 meters.

The petition contains a detailed description of the species' natural history and status, including information on distribution and movements, feeding and prey selection, reproduction, population status and trends, and factors contributing to the current status of the species in the Pacific Ocean. The petition describes the importance of the terrestrial and marine habitat for monk seals around the entire Hawaiian Archipelago. The Petitioners cite studies indicating that, while a significant portion of the species' population is found throughout the Northwestern Hawaiian Islands (NMFS, 2007), it is likely that monk seals are recolonizing the main Hawaiian Islands (Baker, 2006) since Hawaiian monk seals have been sighted on each of the eight main Hawaiian Islands and their presence is increasing (NMFS, 2007). The petition cites studies demonstrating that births have increased on the main Hawaiian Islands since the mid–1990s (NMFS, 2007), and that pups born on the main Hawaiian Islands have been healthier and more likely to survive to adulthood than those born on the Northwestern Hawaiian Islands (Baker *et al.*, 2006). The Petitioners further cite studies that assert that these larger sizes and healthier physical condition reflects greater prey availability and, thus, better foraging conditions in the main Hawaiian Islands (Baker *et al.*, 2006; Baker, 2006; Baker and Johanos, 2004).

The Petitioners claim that the population of monk seals on the main Hawaiian Islands is likely below the carrying capacity of those islands. The Petitioners believe that the petitioned habitat area contains the PCEs or the physical and biological features essential to the conservation of Hawaiian monk seals. The Petitioners claim that the petitioned area provides space for population growth and normal behavior, and thus the main Hawaiian Islands will provide important habitat for recovery of the species. They offer that the habitat components essential for feeding, pupping, nursing, resting, molting, and migrating include all marine waters, along with associated marine aquatic flora and fauna in the water column, as well as the underlying marine benthic community, all of which occur in the main Hawaiian Islands. The Petitioners assert that this is evidenced by the increasing use of the area by monk seals as well as their visibly healthier body condition. As for extending the area of designation in the Northwestern Hawaiian Islands, the Petitioners cite new studies that have contradicted the previous belief that monk seals foraged only on shallow reef habitats (Parrish and Littnan, 2007). The Petitioners cite from Baker *et al.* (2007) that monk seals forage in a variety of marine habitats within approximately 500 meters of the surface in the Northwestern Hawaiian Islands. Thus, the Petitioners suggest that the designation of critical habitat for the Hawaiian monk seal in the main Hawaiian Islands and the extension of the designation in the Northwestern Hawaiian Islands are consistent with the recovery plan for the species.

Finally, the Petitioners request that, if we determine some portion of the petitioned area does not meet the criteria for critical habitat, we analyze whether some subset of this area should be designated as critical habitat.

Petition Finding

Based on the above information and information readily available in our files, and pursuant to criteria specified in 50 CFR 424.14(c), we find the Petitioners present substantial scientific information indicating that a revision to the critical habitat designation for Hawaiian monk seals may be warranted. Our Pacific Islands Fisheries Science Center has conducted research on Hawaiian monk seals foraging, pupping, nursing, resting, and migrating within the petitioned area, in both the main and Northwestern Hawaiian Islands, and the area in general represents principal habitat for Hawaiian monk seals. The Petitioners have requested broad areas to be considered as critical habitat for this species. It is not clear whether such a broad designation is warranted at this time, but we will review the best scientific information available to determine whether these petitioned areas or a subset of these petitioned areas meet the definition of critical habitat.

To ensure that the review of critical habitat for Hawaiian monk seals is complete and based on the best available data, we solicit information and comments on whether the petitioned area, or some subset thereof, qualifies as critical habitat. Areas that include the physical and biological features essential to the conservation of the species and that may require special management considerations or protection should be identified. As stated earlier, essential features include, but are not limited to, space for individual growth and for normal behavior, food, water, air, light, minerals, or other nutritional or physiological requirements, cover or shelter, sites for reproduction and development of offspring, and habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of the species (50 CFR 424.12).

We request that all data, information, and comments be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address (see **ADDRESSES**).

Peer Review

The Office of Management and Budget issued its Final Information Quality Bulletin for Peer Review on December 16, 2004. The Bulletin went into effect June 16, 2005, and generally requires that all ''influential scientific information'' and ''highly influential scientific information'' disseminated on or after that date be peer reviewed. Because the information used to evaluate this petition may be considered ''influential scientific information,'' we solicit the names of recognized experts in the field that could serve as peer reviewers of such information we may disseminate as we evaluate this petition. Independent peer reviewers will be selected from the academic and scientific community, applicable tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

References Cited

Baker, J.D. 2006. The Hawaiian Monk Seal: Abundance Estimation, Patterns in Survival, and Habitat Issues. Unpublished Ph. D. Thesis. University of Aberdeen, UK. 182 p.

Baker, J.D., and T.C. Johanos. 2004. Abundance of the Hawaiian Monk Seal in the Main Hawaiian Islands. Biological Conservation 116: 103–110.

Baker, J.D., C.L. Littnan, and D.W. Johnston. 2006. Potential Effects of Sea Level Rise on the Terrestrial Habitats of Endangered and Endemic Megafauna in the Northwestern Hawaiian Islands. Endangered Species Research 2:21–30.

Baker, J.D., J.J. Polovina, and E.A. Howell. 2007. Effect of Variable Oceanic Productivity on the Survival of an Upper Trophic Predator, the Hawaiian Monk Seal *Monachus schauinslandi*. Marine Ecology Progress Series 346: 277–283.

Center for Biological Diversity, Kahea, and Ocean Conservancy. 2008. Petition to Revise Critical Habitat for the Hawaiian Monk Seal (*Monachus schauinslandi*) Under the Endangered Species Act. 41 pp. *http://www.biologicaldiversity.org/species/mammals/Hawaiian__monk__seal/pdfs/Petition-Monk-Seal-CH–07–02–08.pdf*

National Marine Fisheries Service (''NMFS''). 2007. Recovery Plan for the Hawaiian Monk Seal (*Monachus schauinslandi*). Second Revision. National Marine Fisheries Service, Silver Spring, MD. 165 pp.

Parrish, F.A. and C.L. Littnan. 2007. Changing Perspectives in Hawaiian Monk Seal Research Using Animal-Borne Imaging. Marine Technology Society Journal 41:30–34.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: September 29, 2008.

Samuel D. Rauch III,

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

[FR Doc. E8–23467 Filed 10–2–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 080721859–81206–01]

RIN 0648–AX01

Fisheries of the Exclusive Economic Zone Off Alaska, Groundfish of the Gulf of Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulatory amendment to exempt fishermen using dinglebar fishing gear in federal waters of the Gulf of Alaska from the requirement to carry a vessel monitoring system (VMS). This action is necessary because the risk of damage posed to protected corals in the Gulf of Alaska by the dinglebar gear fishery is minor and insufficient to justify the costs of VMS. This action is intended to promote the goals and objectives of the Magnuson–Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Groundfish of the Gulf of Alaska, and other applicable law.

DATES: Comments must be received no later than November 3, 2008.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–AX01, 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.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

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) 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 (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at *http://alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Julie Scheurer, 907–586–7356.

SUPPLEMENTARY INFORMATION:

Groundfish fisheries in the Gulf of Alaska (GOA) are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP designates essential fish habitat and habitat areas of particular concern (HAPCs) in the Gulf of Alaska. HAPCs are areas within essential fish habitat that are of particular ecological importance to the long–term sustainability of managed species, are of a rare type, or are especially susceptible to degradation or development. The Council may designate specific sites as HAPCs and may develop management measures to protect habitat features within them. In order to protect HAPCs, certain habitat protection areas and habitat conservation zones have been designated. A habitat protection area is an area of special, rare habitat features where fishing activities that may adversely affect the habitat are restricted.

Two HAPCs are designated in the Fairweather Grounds and one HAPC is designated near Cape Ommaney in the Gulf of Alaska. Within these HAPCs, five Coral Habitat Protection Areas were identified where high concentrations of sensitive corals occur. Fishing is restricted only in the Coral Habitat

Protection Areas, not the entire HAPC. The Coral Habitat Protection Areas cover a total area of 13.5 square nautical miles and were established to protect sensitive and slow–growing corals (*Primnoa* species) that provide a rare and important habitat type for rockfish and other species.

Management measures restrict fishing activity within the five GOA Coral Habitat Protection Areas. Anchoring and the use of bottom contact gear by any federally permitted fishing vessel in these five areas are prohibited. Anchoring and fishing with bottom contact gear adversely affect coral habitat by breaking and injuring the coral and disturbing the substrates to which corals attach. Colonies of *Primnoa* species are easily damaged or dislodged from the seafloor if contacted by fishing gear and recovery after disturbance is likely to take decades. NOAA Fisheries Office for Law Enforcement uses vessel monitoring systems (VMS) to enforce the anchoring and fishing with bottom contact gear prohibitions in the Coral Habitat Protection Areas.

Bottom contact fishing gear includes nonpelagic trawl, dredge, dinglebar, pot, and hook–and–line gear. Nonpelagic trawl, dredge, and dinglebar gear are considered mobile bottom contact fishing gear. Dinglebar gear is similar to salmon troll gear with the addition of a heavy metal bar that keeps the hooks close to the seafloor. Of the types of mobile bottom contact fishing gear, only dinglebar gear is used off the coast of Southeast Alaska in the State of Alaska–managed fishery for lingcod.

Although lingcod is not managed under the FMP, if a vessel catches and retains any groundfish managed under the FMP in the exclusive economic zone off Alaska (EEZ), it also is considered to be fishing for groundfish, and therefore must carry a Federal Fishing Permit. Certain species of rockfish are required to be retained (demersal shelf rockfish and dark rockfish) under the FMP. Rockfish are common bycatch in the state–managed dinglebar fishery for lingcod, and therefore these vessels are subject to the requirements of the FMP and must carry a Federal Fishing Permit. All federally permitted vessels with mobile bottom contact gear onboard are subject to VMS requirements (50 CFR 679.7(a)(22)). Consequently, vessels fishing for lingcod with dinglebar gear also must carry a transmitting VMS onboard.

Vessel monitoring systems allow NMFS to enforce regulations over a large area. VMS requirements went into effect June 28, 2006 (71 FR 36694), for all vessels fishing in the GOA and using mobile bottom contact fishing gear. Vessels participating in the dinglebar fishery for lingcod in federal waters of Southeast Alaska first used VMS units in 2007.

Information about the GOA dinglebar fishery for lingcod is available from two sources: VMS data from 2007, and logbook data submitted to the Alaska Department of Fish and Game (ADFG). Logbook data are self–reported by fishermen and estimate the area, average depth, and other characteristics of the fishing operation. These reports are subjective and are not routinely cross–checked with VMS or other data.

Logbook data indicate that fishing depths may have limited overlap with the depths where sensitive corals occur. In general, *Primnoa* species in the HAPCs are found deeper than 70 fathoms. Most of the area within the Coral Habitat Protection Areas is deeper than 80 fathoms (86.1 to 100 percent across the five areas). Ninety–six percent of the logbook reports from 1998–2002 indicate fishing at average depths of less than 80 fathoms, and 80 percent at depths less than 50 fathoms, whereas only four percent reported fishing at an average depth deeper than 80 fathoms. Between 2003 and 2007, all fishing was reported at depths averaging less than 80 fathoms, and only two percent of the observations fished between 70 and 80 fathoms. During this same period, 93 percent of the logbook reports indicated fishing at depths shallower than 50 fathoms. These data suggest that fishing in recent years has occurred at shallower depths. On the assumption that the reported depths are averages, some fishing took place at depths greater than these reported values. Precise fishing depth data are unavailable.

VMS units were required for the first time in this fishery in 2007. Landings records and VMS data indicate that only eight vessels participated in the dinglebar fishery for lingcod in federal waters off Southeast Alaska in 2007 and participation in the fishery has been declining over the past 10 years. All these vessels carried VMS units as a requirement for participation in the fishery. The VMS data show that in 2007 fishery participants did not fish in the GOA Coral Habitat Protection Areas and very little fishing activity occurred at all in the Cape Ommaney area. The VMS requirement was likely a deterrent to fishing in protected areas.

NMFS also correlated VMS data with information about bottom substrates in the HAPCs. This analysis revealed that the dinglebar fishery for lingcod targets a different substrate type (folded sandstone) than the substrates that typically support *Primnoa* species corals (bedrock and boulders). Small pinnacles in the areas of high coral concentrations are also a likely deterrent to fishing in those areas with dinglebar gear.

In June 2008, the Council adopted its preferred alternative to exempt fishermen using dinglebar gear from the VMS requirement. After reviewing the analysis, the Council concluded that any risk of illegal fishing and damage to corals in the restricted areas of the Cape Ommaney and Fairweather Grounds HAPCs were insufficient to justify monitoring by VMS, given the cost imposed on lingcod fishermen, the small scale of the fishery (in terms of number of participants, duration, size of vessels, and revenues generated), and the limited spatial overlap of the fishery with restricted areas of the HAPCs.

The total cost for acquisition and installation of a VMS unit is estimated at $2,068 per vessel. The Pacific States Marine Fish Commission reimburses a portion of the initial cost to the vessel owner, but this still represents a cost to society. Annual maintenance and operation costs are estimated at $630. A full discussion of the costs of VMS is provided in the RIR for this proposed action (see **ADDRESSES**). The Council reiterated its previous decision that the need for VMS monitoring should be evaluated on a case–by–case basis for individual fisheries. Consequently, the VMS exemption proposed in this action applies specifically to dinglebar gear with respect to the five Coral Habitat Protection Areas currently identified in the GOA. Should the Council identify new GOA HAPCs in the future, the need for VMS monitoring for all gear types will be examined with respect to those areas. This proposed action would not exempt vessels using dinglebar gear for other fisheries from VMS requirements. Likewise, the proposed action would not exempt vessels fishing for lingcod with other gear types from the VMS requirement.

This action proposes to exempt vessels that use dinglebar gear from the VMS requirements at §§ 679.7(a)(22) and 679.28(f)(6)(iii) by revising the text in these paragraphs to specify that the VMS requirement only applies to two types of mobile bottom contact gear, non–pelagic trawl gear and dredge gear, not dinglebar gear. This change would not remove dinglebar gear from the definition of mobile bottom contact gear.

Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson–Stevens Act, the NMFS Assistant Administrator has

determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson–Stevens Act, and other applicable law, subject to further consideration after public comment.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

The objective of this proposed action is to prevent damage to corals from the use of dinglebar gear while ensuring that regulations are applied without imposing undue costs on the fishermen using dinglebar gear. Evidence suggests that the dinglebar fishery for lingcod does not overlap with areas where sensitive coral species occur, so the VMS requirements are an unnecessary burden to a small fleet. This action would directly regulate all vessels with Federal Fishing Permits carrying dinglebar gear in the EEZ. All such vessels are considered ''small entities'' for purposes of the RFA. NMFS has identified eight to twelve small entities that would be affected by this proposed rule. All of the directly regulated individuals would be expected to benefit from this action relative to the status quo alternative because they would not be required to purchase and maintain VMS units in order to participate in the lingcod fishery.

NMFS has not identified a significant alternative to the proposed action that would meet the objectives of the action and would have a smaller adverse impact on directly regulated small entities. The objectives of the action were to avoid damage to protected habitat without imposing undue burdens on fishermen using dinglebar gear. The proposed rule completely relieves the financial burden of the VMS. No other significant alternative would have a smaller impact on directly regulated small entities. The Council considered an alternative that would have had the effect of lifting the restriction on fishing by dinglebar vessels within the protected habitat as well as the VMS requirement. However, the Council rejected this alternative without further analysis because its intent was not to lift restrictions on fishing by a specific gear type that might impact bottom habitat, but to lift an enforcement measure if that measure imposed costs disproportionate to its efficacy.

There are no new reporting, recordkeeping, or other compliance requirements associated with this proposed rule. No federal rules that duplicate, overlap, or conflict with the proposed action were identified in the analysis.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries.

Dated: September 29, 2008.

Samuel D. Rauch III

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; and 3631 *et seq.*; Pub. L. 108–447.

2. In § 679.7, paragraph (a)(22) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(22) *VMS for non–pelagic trawl and dredge gear vessels in the GOA.* Operate a federally permitted vessel in the GOA with non–pelagic trawl or dredge gear onboard without an operable VMS and without complying with the requirements at § 679.28.

* * * * *

3. In § 679.28, paragraph (f)(6)(iii) is revised to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(f) * * *

(6) * * *

(iii) You operate a vessel required to be federally permitted with non–pelagic trawl or dredge gear onboard in reporting areas located in the GOA or operate a federally permitted vessel with non–pelagic trawl or dredge gear onboard in adjacent State waters; or

* * * * *

[FR Doc. E8–23456 Filed 10–2–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 73, No. 193
Friday, October 3, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. DA–08–09; AMS–DA–08–0082]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension of a currently approved information collection for the Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products, and the Certification of Sanitary Design and Fabrication of Equipment Used in the Slaughter, Processing, and Packaging of Livestock and Poultry Products.

DATES: Comments must be received by October 17, 2008 to be considered.

ADDITIONAL INFORMATION OR COMMENTS: Contact Reginald L. Pasteur, USDA/AMS/Dairy Programs, Dairy Standardization Branch, Room 2746—South Building, 1400 Independence Avenue, SW., Washington, DC 20250–0230; Tel: (202) 690–3571, Fax: (202) 720–2643 or via e-mail at *reginald.pasteur@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements Under Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products.

OMB Number: 0581–0126.

Expiration Date of Approval: June 30, 2009.

Type of Request: Revision of a currently approved information collection.

Abstract: The dairy grading program is a voluntary user fee program authorized under the Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621–1627). The regulations governing inspection and grading services of manufactured or processed dairy products are contained in 7 CFR part 58. In order for a voluntary inspection form to perform satisfactorily, appropriate information must be collected. The information requested is used to identify the product offered for grading, to identify a request from a manufacturer of equipment used in dairy, meat or poultry industries for evaluation regarding sanitary design and construction, to identify and contact the party responsible for payment of the inspection, grading or equipment evaluation fee and expense and, to identify applicants who wish to be authorized for the display of official identification on product packaging materials, equipment, utensils, or on descriptive or promotional materials.

Estimate of Burden: Public reporting burden for this record keeping is estimated to average .0585 hours per response.

Respondents: Distributors, manufacturers, and packers of butter and cheese; and manufacturers of processing equipment used in the dairy, meat and poultry industries.

Estimated Number of Respondents: 400.

Estimated Total Annual Burden on Respondents: 360.

Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should reference OMB No. 0581–0126 and the Dairy Inspection and Grading Program and be sent to the Office of the Deputy Administrator, USDA/AMS/Dairy Programs, Room 2968–S, 1400 Independence Avenue, SW., Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and be submitted at the Federal eRulemaking portal: *http://www.regulations.gov.* All comments received will be available for public inspection during regular business hours at the same address.

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

Authority: 7 U.S.C. 1621–1627.

Dated: September 29, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–23392 Filed 10–2–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Implementation of Farm Bill Amendments to the Packers and Stockyards; Notice of Town Hall Meetings

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice of Town Hall Meeting.

SUMMARY: This notice announces three Town Hall meetings to allow interested parties to provide advice and recommendations to the Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GISPA) regarding the regulations that Title XI of the Food, Conservation and Energy Act of 2008 (Farm Bill) requires GIPSA to promulgate.

DATES: GIPSA will hold a town hall meeting in three locations:

1. October 14, 2008, 6 p.m. to 8 p.m., Van Buren, Arkansas.

2. October 16, 2008, 6 p.m. to 8 p.m., Ames, Iowa.

3. October 22, 2008, 6 p.m. to 8 p.m., Gainesville, Georgia.

ADDRESSES: The public meetings will be held in three locations: Arkansas, Georgia, and Iowa.

1. Arkansas—Crawford County Cooperative Extension Office, 105 Pointer Trail West Van Buren, AR 72956.

2. Iowa—Iowa State University Scheman Building, Room 275, 1810 Lincoln Way, Ames, IA 50010.

3. Georgia—Hall County FSA Building, 734 East Crescent Dr., Gainesville, GA 30501.

FOR FURTHER INFORMATION CONTACT: Jeana Harbison, Legal Specialist, Policy and Litigation Division-GIPSA, United States Department of Agriculture, 1400 Independence Ave, SW., Washington, DC 20250–3646. Requests for information can be made by e-mail sent to: *Jeana.M.Harbison@usda.gov;* by phone at (202) 720–7363; or fax at (202) 690–3207.

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) enforces the Packers and Stockyards Act of 1921 (P&S Act). Under authority granted the Secretary of Agriculture and delegated to us, we are authorized (7 U.S.C. 228) to make those regulations necessary to carry out the provisions of the P&S Act.

The Food, Conservation and Energy Act of 2008 (Farm Bill) tasked GIPSA with the responsibility of promulgating regulations with respect to the Packers and Stockyards Act, 1921 (P&S Act) (7 U.S.C. 181 *et seq.*) to establish criteria to be considered in determining:

1. Whether an undue or unreasonable preference or advantage has occurred in violation of such Act;

2. Whether a live poultry dealer has provided reasonable notice to poultry growers of any suspension of the delivery of birds under a poultry growing arrangement;

3. When a requirement of additional capital investments over the life of a poultry growing arrangement or swine production contract constitutes a violation of such Act; and,

4. If a live poultry dealer or swine contractor has provided a reasonable period of time for a poultry grower or a swine production contract grower to remedy a breach of contract that could lead to termination of the poultry growing arrangement or swine production contract.

The Farm Bill also requires that regulations be promulgated to implement new Section 210 of the P&S Act regarding the use of arbitration in production contract disputes. This specifically involves:

1. The right to decline arbitration when entering into a contract;

2. Disclosure of the right to decline arbitration; and

3. Choice of arbitration once a dispute arises if both parties agree in writing.

We must also establish the criteria that the Secretary will consider in determining whether the arbitration process provided in a production contract provides a meaningful opportunity for the grower or producer to participate fully in the arbitration process.

Purpose: The purpose of these meetings is to gather information and recommendations from interested individuals and organizations regarding the promulgation of regulations concerning livestock and poultry production contracts, including swine production contracts and poultry growing arrangements as required by the Farm Bill. We wish to discuss and address existing problems, possible obstacles and potential solutions that would help us in the development of the regulations. Comments and suggestions received at this meeting may be used by GIPSA to draft the required regulations.

Public Participation: While oral comments should be limited to five minutes, extended written comments may be submitted for the record. Members of the public may also submit written comments for distribution at a meeting without presenting oral comments. Such written comments should be sent by mail or fax machine to Jeana Harbison as above no later than October 10, 2008.

Telephone Participation: Those unable to attend a public meeting may participate via an audio bridge by calling (877) 950–5739, participant pass code ''6969173#.'' All callers using the above pass code will be placed initially in ''listen-only'' mode during the presentation. Following the presentation, callers using the audio bridge will be given an opportunity to participate in the ''Question and Answer'' portion of the meeting or they may e-mail questions or comments during the meeting to *Jeana.M.Harbison@usda.gov.*

Instructions: If the comments and information may be used in promulgating regulations, they will become a matter of public record. Extended written comments should make reference to the date and page number of this issue of the **Federal Register** and be identified as ''P&SA Town Hall Meeting Comments.'' Written comments and transcripts of oral comments will be available for public inspection at the above address during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management Support Staff at (202) 720–7486 to arrange for a public inspection of comments.

Special Accomodations: Persons attending a meeting who require special assistance or accommodations, are asked to notify Jeana Harbison by e-mail at *Jeana.M.Harbison@usda.gov;* by phone at (202) 720–7363; or fax at (202) 690–3207, by October 9, 2008 by 5 p.m. EST.

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E8–23413 Filed 10–2–08; 8:45 am]

BILLING CODE 3410–KD–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities previously furnished by such agencies.

Comments Must be Received on or Before: November 2, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or to Submit Comments Contact: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance

requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Bag, Sand, Polypropylene, 26″ x 14″, Tan

NSN: 8105–01–336–6163—Bag, Sand, Polypropylene, 26″ x 14″, Tan.

Bag, Sand, Polypropylene, 26″ x 14″, Green

NSN: 8105–01–467–0402—Bag, Sand, Polypropylene, 26″ x 14″, Green.
NPA: Southeast Vocational Alliance, Inc., Houston, TX.
Contracting Activity: Defense Logistics Agency, Defense Supply Center Philadelphia, Philadelphia, PA.
Coverage: C-list remaining 50% of the government requirement for the Defense Supply Center Philadelphia, PA.

Services

Service Type/Location: IRS Document Destruction, IRS Office, Carmel, IN, 12900 North Meridian, Carmel, IN.
Service Type/Location: IRS Document Destruction, IRS Office, Greenwood, IN, 1111 South Park Drive, Greenwood, IN.
NPA: Shares Inc., Shelbyville, IN.
Contracting Activity: Department of Treasury, Internal Revenue Service.
Service Type/Location: Administrative Services, Delaware Valley Office, GSA Region 3, Trenton NJ, 402 E State Street, Trenton, NJ.
NPA: Occupational Training Center of Burlington County, Mt. Holly, NJ.
Contracting Activity: General Services Administration, Public Building Services, Region 3.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E8–23317 Filed 10–2–08; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* November 2, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On August 8, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR 46245) of proposed additions to the Procurement List.

[Insert **Federal Register** Comments Here]

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Coffee, Roasted, 39oz Resealable Pouch
NSN: 8955–01–E60–8859—S & D
NSN: 8955–01–E61–3689—Sara Lee
NSN: 8955–01–E61–3688—Maxwell House
NPA: CW Resources, Inc., New Britain, CT
Contracting Activity: Defense Logistics Agency, Defense Supply Center Philadelphia
Coverage: C-List for the Government requirement of the Defense Supply Center Philadelphia, Philadelphia, PA

Services

Service Type/Location:
Janitorial Services, Marine Corps Base Hawaii, ROICC MCBH BLDG #566, NCIS BLDG #1096, COMPATRECON WING–TWO BLDG #6468, Kaneohe Bay, HI
NAVMAG Lualualei, Basewide, Waianae, HI
NCTAMS, Naval Computer and Telecommunications Area Master, Wahiawa, HI
Kalaeloa Air Station, Basewide, Kalaeloa, HI
Iroquois Point Housing, Basewide, Iroquois Point, HI
NAVMAG West LOCH, Basewide, Waianae, HI
Camp Catlin, Basewide, Kailua, HI
Moanalua Terrace, U.S. Navy Moanalua Terrace, Moana Terrace, HI
Ford Island, Naval Air Station, Ford Island Pearl Harbor, Honolulu, HI
NPA: Opportunities for the Retarded, Inc., Wahiawa, HI
Contracting Activity: Department of the Navy, NAVFAC Engineering Command Hawaii

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E8–23318 Filed 10–2–08; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia 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 day long briefing meeting of the District of Columbia Advisory Committee to the Commission will convene at 9 a.m. on Thursday, October 16, 2008, at the U.S. Commission on Civil Rights, 624 Ninth Street, NW.,

Conference Room 540, Washington, DC 20425. The purpose of the briefing meeting is to review education issues the District of Columbia.

Members of the public are invited to offer comments—written comments must be received in the Eastern Regional Office by Monday, November 17, 2008. The address is Eastern Regional Office, 624 Ninth Street, NW., Suite 740, Washington, DC 20425. Persons wishing to e-mail their comments or who desire additional information should contact Alfreda Greene, Secretary, at 202–376–7533, or by e-mail: *agreene@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern 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 Eastern 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 in Washington, DC, September 30, 2008.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E8–23435 Filed 10–2–08; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Membership of the Office of the Secretary Performance Review Board

AGENCY: Department of Commerce.

ACTION: Notice of Membership on the Office of the Secretary Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), Department of Commerce (DOC) announces the appointment of persons to serve as members of the Office of the Secretary (OS) Performance Review Board (PRB). The OS PRB is responsible for reviewing performance Ratings, pay adjustments and bonuses of Senior Executive Service (SES) members. The term of the new members of the OS PRB will expire December 31, 2010.

DATES: *Effective Date:* The effective date of service of appointees to the Office of the Secretary Performance Review Board is upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Denise A. Yaag, Director, Office of Executive Resources, Office of Human Resources Management, Office of the Director, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–3600.

SUPPLEMENTARY INFORMATION: The names, position titles, and type of appointment of the members of the OS/PRB are set forth below by organization:

Department of Commerce

Office of the Secretary

2008–2010

Performance Review Board Membership

Office of the Secretary

Alicemary O. Leach, Director, Executive Secretariat. Earl B. Neal, Director, Office of Information Technology, Security, Infrastructure, and Technology.

Office of Assistant Secretary for Administration

Fred Fanning, Director for Administrative Services. Suzan J. Aramaki, Director, Office of Civil Rights.

National Institute of Standards and Technology

W. Todd Grams, Chief Financial Officer for NIST.

National Oceanic and Atmospheric Administration

Daniel W. Stockton, Program Executive Officer, National Polar-Orbiting Operational Environmental Satellite System.

Office of the General Counsel

Michael A. Levitt, Assistant General Counsel for Legislation and Regulation. Joan Maginnis, Assistant General Counsel for Finance and Litigation (Alternate).

Dated: September 24, 2008.

Denise A. Yaag,

Director, Office of Executive Resources.

[FR Doc. E8–23281 Filed 10–2–08; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–894]

Certain Tissue Paper Products From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Final Determination

We determine that certain tissue paper products (''tissue paper'') produced by Vietnam Quijiang Paper Co., Ltd. (''Quijiang'') are circumventing the antidumping duty order on tissue paper from the People's Republic of China (''PRC''), as provided in section 781(b) of the Tariff Act of 1930, as amended (''the Act''). *See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China,* 70 FR 16223 (March 30, 2005) (''*Order*'').

DATES: *Effective Date:* October 3, 2008.

FOR FURTHER INFORMATION CONTACT: Julia Hancock, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1394.

SUPPLEMENTARY INFORMATION:

Background

On April 22, 2008, the Department of Commerce (''the Department'') published in the **Federal Register** the affirmative preliminary determination that certain tissue paper products (''tissue paper'') produced by Quijiang are circumventing the *Order* on tissue paper from the People's Republic of China (''PRC''), as provided in section 781(b) of the Act. *See Certain Tissue Paper Products From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination,* 73 FR 21580 (April 22, 2008) (''*Preliminary Determination*''). Additionally, the Department published in the **Federal Register** a correction to its preliminary determination of circumvention on May 23, 2008. *See Certain Tissue Paper Products From the People's Republic of China: Correction to Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order,* 73 FR 30053

(May 23, 2008) (''*Correction to Preliminary Determination*'').

On June 3, 2008, Petitioner [1] filed its case brief. Quijiang did not file a case brief, but on June 5, 2008, Quijiang filed its rebuttal brief. Additionally, on June 24, 2008, the Department extended the final determination by 60 days to September 19, 2008. *See* Letter to All Interested Parties from Catherine Bertrand, Program Manager, Re: *Circumvention Inquiry on Certain Tissue Paper Products from the People's Republic of China: Extension of Final Determination,* (June 24, 2008).

On August 19, 2008, Petitioner submitted comments regarding Quijiang's participation in the third administrative review of this Order, which contained new factual information. Although Petitioner's comments were untimely, on August 27, 2008, the Department issued a letter to interested parties notifying them that it was accepting Petitioner's August 19, 2008, submission, pursuant to 19 CFR 351.302(b) and inviting comments from Quijiang and other interested parties. No comments were submitted.

Scope of the Antidumping Duty Order

The tissue paper products subject to this order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (''HTSUS''). Subject merchandise may be under one or more of several different subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.31.1000; 4804.31.2000; 4804.31.4020; 4804.31.4040; 4804.31.6000; 4804.39; 4805.91.1090; 4805.91.5000; 4805.91.7000; 4806.40; 4808.30; 4808.90; 4811.90; 4823.90; 4820.50.00; 4802.90.00; 4805.91.90; 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.[2]

Excluded from the scope of this order are the following tissue paper products: (1) Tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, *i.e.*, disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

Scope of the Circumvention Inquiry

The products covered by this inquiry are jumbo rolls of tissue paper that are exported from the PRC to the Socialist Republic of Vietnam (''Vietnam'') where they are converted, possibly dyed and/or printed, into tissue paper products, as described above in the ''Scope of the Antidumping Duty Order'' section. This inquiry only covers such products that are exported to the United States by Quijiang.

Statutory Provisions Regarding Circumvention

Section 781(b) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting circumvention inquiries under section 781(b) of the Act, the Department relies upon the following criteria: (A) Merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is subject to an antidumping duty order; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in (B) is minor or insignificant; and (D) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States.

Section 781(b)(2) of the Act provides the criteria for determining whether the process of assembly or completion is minor or insignificant. These criteria are:

(a) The level of investment in the foreign country;

(b) The level of research and development in the foreign country;

(c) The nature of the production process in the foreign country;

(d) The extent of the production facilities in the foreign country; and

(e) Whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

The Statement of Administrative Action (''SAA'') accompanying the Uruguay Round Agreements Act, H. Doc. No. 103–316, at 893 (1994), provides some guidance with respect to these criteria. It explains that no single factor listed in section 781(b)(2) of the Act will be controlling. Accordingly, it is the Department's practice to evaluate each of the factors as they exist in the United States or foreign country depending on the particular circumvention scenario. Therefore, the importance of any one of the factors listed under section 781(b)(2) of the Act can vary from case to case depending on the particular circumstances unique to each circumvention inquiry.

In this circumvention inquiry, for the final determination, we continued to base our analysis on both qualitative and quantitative factors in determining whether the process of converting the jumbo rolls in Vietnam was minor or insignificant, in accordance with the criteria of section 781(b)(2) of the Act. This approach is consistent with our analysis in prior circumvention inquiries. *See Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta From Italy: Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders,* 68 FR 46571 (August 6, 2003) (''*Pasta Circumvention Prelim*'') (unchanged in *Pasta Circumvention Final,* 68 FR 54888).

In making a determination whether to include merchandise assembled or completed in a foreign country within an order, section 781(b)(3) of the Act

[1] Seaman Paper Company of Massachusetts, Inc. (''Petitioner '').

[2] On January 30, 2007, at the direction of U.S. Customs and Border Protection (''CBP''), the Department added the following HTSUS classifications to the AD/CVD module for tissue paper: 4802.54.3100, 4802.54.6100, and 4823.90.6700. However, we note that the six-digit classifications for these numbers were already listed in the scope.

instructs us to take into account such factors as: (A) The pattern of trade, including sourcing patterns; (B) whether affiliation exists between the exporter of the merchandise and the person who uses the merchandise to assemble or complete in the foreign country the merchandise that is sold in the United States; and (C) whether imports into the foreign country of the merchandise described in section 781(b)(1)(B) have increased since the initiation of the original investigation. Each of these factors is examined below.

For the final determination, we have continued to use the information gathered from the questionnaire responses submitted by Quijiang and its PRC parent company, Guilin Qifeng Paper Co., Ltd. (''Guilin Qifeng''), for purposes of conducting both qualitative and quantitative analyses in accordance with the criteria enumerated in section 781(b) of the Act as outlined above.

Summary of Statutory Analysis

As discussed above, in order to make an affirmative final determination of circumvention, all the elements under sections 781(b)(1) of the Act must be satisfied, taking into account the factors under section 781(b)(2). In addition, section 781(b)(3) of the Act instructs the Department to consider, in determining whether to include merchandise assembled or completed in a foreign country within the scope of an order, such factors as: pattern of trade, affiliation, and whether imports into the foreign country of the merchandise described in section 781(b)(1)(B) have increased after the initiation of the investigation. Because no party submitted comments regarding our circumvention analysis, pursuant to section 781(b)(1) of the Act, we continue to find that the merchandise sold in the United States is within the same class or kind of merchandise that is subject to the *Order* and was completed or assembled in a third country. *See Preliminary Determination,* 73 FR at 21582. Additionally, because no party submitted comments regarding our circumvention analysis, pursuant to section 781(b)(2), we continue to find that the process of assembly of the PRC-origin jumbo rolls to cut-to-length tissue paper by Quijiang is minor and insignificant. *Id.,* at 21582–85. Furthermore, because no party submitted comments regarding our circumvention analysis, in accordance with sections 781(b)(1)(D) and 781(b)(1)(E) of the Act, we continue to find that the value of the merchandise produced in the PRC is a significant portion of the total value of the merchandise exported to the United States, *see id.* at 21584–85, and that action is appropriate to prevent evasion of the *Order.* Thus, we continue to find affirmative evidence of circumvention in accordance with sections 781(b)(1) and (2) of the Act. Moreover, we continue to find the factors required by section 781(b)(3) of the Act indicate that there is circumvention of the *Order.* Consequently, our statutory analysis leads us to continue to find that during the period from July 2004 to July 2006, Quijiang circumvented the *Order* as a result of its exports to the United States of PRC-origin jumbo rolls converted to cut-to-length tissue paper in Vietnam, as discussed above.

Facts Available

Petitioner requested in its case brief that we apply total adverse facts available (''AFA'') to Quijiang for purposes of this final determination. Pursuant to section 776 of the Act, we find that the application of facts otherwise available is not warranted under sections 776(a)(1) or (2) of the Act because Quijiang submitted the requested information by the required deadlines, provided information in a timely manner and in the form or manner requested, and did not significantly impede this proceeding under the antidumping statute. Further, no verification took place of Quijiang's data because the Department chose not to conduct verification given the particular facts of this case, not because of any deficiency in Quijiang's responses. We disagree with Petitioner's contention that there is record evidence demonstrating that Quijiang's data is unreliable. In fact, we find that there is substantial evidence on the record demonstrating that Quijiang's statements and submitted data are reliable. Therefore, we find that, pursuant to sections 776(a)(1) and (2) of the Act, there is no basis for applying facts available, much less adverse facts available, to Quijiang for the final determination. For further discussion and greater detail on the Department's analysis on this issue, please *see* Comment 1 of the Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, Subject: Issues and Decision Memorandum for the Final Determination of the Anticircumvention Inquiry of Certain Tissue Paper Products from the People's Republic of China (''PRC'') (''Issues and Decision Memo'').

Other Issues

All issues raised by the interested parties to which we have responded are listed in the Appendix to this notice and addressed in the Issues and Decision Memo, which is hereby adopted by this notice.

In its case brief, Petitioner raised an argument regarding the public ranging of the average value of the value added to the finished merchandise by Quijiang's processing. Because the publicly ranged average value is within ten percent of the actual figure, pursuant to section 351.304(c) of the Department's regulations, we find that we correctly ranged the average value of the value added to finished merchandise by Quijiang's processing. *See* Comment 2 of the Issues and Decision Memo.

Petitioner also argued in its case brief that the record evidence shows that Quijiang, contrary to its own declarations, has continued to import semi-completed tissue paper products from the PRC after July 2006. Petitioner therefore argued that the Department should cease its certification program and require suspension of liquidation of all Quijiang's imports of subject merchandise. However, we find that the only information on the record supporting Petitioner's claim is an affidavit from Petitioner's own market researcher. Absent import or other such documentation, we do not believe the substantial evidence on the record supports Petitioner's allegation that Quijiang has continued to import PRC-semi completed tissue paper products that were converted into finished merchandise and exported to the United States beyond July 2006. Accordingly, because Quijiang sourced jumbo rolls from a PRC supplier to produce tissue paper products, which were exported to the United States, we continue to find that circumvention occured between July 2004 and July 2006 in this final determination. With respect to Quijiang's current U.S. exports, we have determined that the certification program remains appropriate for Quijiang's exports to the United States of tissue paper products produced from Vietnamese-origin paper. For further discussion of this issue, please *see* Comments 1 and 3 of the Issues and Decision Memo.

Parties can find a complete discussion of the issues raised in this inquiry and corresponding recommendation in this public memorandum, which are on file in the Central Records Unit (''CRU''), Room 1117 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memo can be accessed directly on the internet at *http://ia.ita.doc.gov/.* The paper copy and electronic version

of the Issues and Decision Memo are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, the Department will continue to direct CBP to suspend liquidation and to require a cash deposit of estimated duties, at the PRC-wide rate of 112.64 percent, on all unliquidated entries of certain tissue paper products produced by Quijiang that were entered, or withdrawn from warehouse, for consumption, from on or after September 5, 2006, the date of initiation of the circumvention inquiry, with the exception described below.

For all entries of Quijiang's tissue paper products for which the U.S. importer submits a certification from Quijiang that the merchandise is non-subject, (*i.e.*, of Vietnamese-origin and not produced using PRC-origin jumbo rolls), the Department will continue to direct CBP to liquidate those entries without regard to antidumping duties. For further discussion of this issue, please *see* Comment 2 of the Issues and Decision Memo. The Department will not request that CBP suspend liquidation, or require a cash deposit of estimated duties at the PRC-wide rate, for any entries of tissue paper accompanied by the certification in Appendix II of this notice. However, the Department will direct CBP to suspend liquidation and to require a cash deposit of estimated duties, at the PRC-wide rate of 112.64 percent, for any entries of tissue paper not accompanied by this certification in Appendix II of this notice.

Concurrent and Future Administrative Reviews

Because we have reached a final affirmative determination of circumvention, as stipulated in the *Preliminary Determination*, 73 FR at 21587, with respect to Quijiang, we are expanding the period of review for the third administrative review, initiated on April 25, 2008 date, back to September 5, 2006, the date of initiation of the circumvention inquiry, to include all of Quijiang's entries covered by this determination. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 22337, (April 25, 2008). In concordance with this finding of circumvention, the review period of that segment of the proceeding will be expanded as of the date of issuance of this final determination with respect to Quijiang's entries. In accordance with the certifications provided to CBP by Quijiang, all certified entries are subject to verification by the Department, including those that entered into the United States during the expanded third administrative review. In conducting a review of these certified entries, the Department will examine all records Quijiang maintains in its normal course of business supporting its certifications that no PRC-origin jumbo rolls were used in the production of Vietnamese-origin tissue paper products. Consistent with the terms of the certifications submitted by Quijiang, if Quijiang elects not to participate in the administrative review or does not consent to verification of these certified entries, we will immediately revoke the certification program and instruct CBP to suspend liquidation and collect cash deposits at the PRC-wide rate of 112.64 percent on all of Quijiang's entries of tissue paper, regardless of country of origin.

Notice to Parties

This notice also serves as the only reminder to parties subject to the administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This affirmative final circumvention determination is published in accordance with section 781(b) of the Act and 19 CFR 351.225.

Dated: September 19, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

Discussion of the Issues

Comment 1: Total Adverse Facts Available (''AFA'') for Quijiang

Comment 2: Clerical Error in Value-Added Calculation

Comment 3: Cash Deposits and Suspension of Liquidation

Appendix II

Certification of Vietnam Quijiang Paper Co., Ltd.

Certification to U.S. Customs and Border Protection

1. Vietnam Quijiang Paper Co., Ltd. (''Vietnam Quijiang'') hereby certifies that the certain tissue paper products being exported and subject to this certification were not produced from Chinese origin jumbo rolls.

2. By signing this certificate, Vietnam Quijiang also hereby agrees to maintain sufficient documentation supporting the above statement such as country of origin certificates for all jumbo rolls used to process the exported certain tissue paper products. Further, Vietnam Quijiang agrees to submit to verification of the underlying documentation supporting the above statement. Vietnam Quijiang agrees that failure to submit to verification of the documentation supporting these statements will result in immediate revocation of certification rights and that Vietnam Quijiang will be required to post a cash deposit equal to the China-wide entity rate on all entries of certain tissue paper products. In addition, if the Department of Commerce identifies any misrepresentation or inconsistencies regarding the certifications, Vietnam Quijiang recognizes that the matter may be reported to the U.S. Customs and Border Protection by the Department for possible enforcement action.

Signature:

Printed Name:

Title:

[FR Doc. E8–22715 Filed 10–2–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–851]

Dynamic Random Access Memory Semiconductors From the Republic of Korea: Final Results of Sunset Review and Revocation of Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 1, 2008, the Department of Commerce (''the Department'') published in the **Federal Register** the notice of initiation of the five-year sunset review of the countervailing duty order on dynamic random access memory semiconductors (''DRAMS'') from the Republic of Korea (''ROK''), pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). Because the domestic interested party did not file a substantive response by the applicable deadline and has withdrawn its notice of intent to participate in this sunset review, the Department is revoking this countervailing duty order.

DATES: *Effective Date:* August 11, 2008.

FOR FURTHER INFORMATION CONTACT: Shane Subler or David Neubacher, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0189 or (202) 482–5823, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 2003, the Department issued a countervailing duty order on DRAMS from the ROK (68 FR 47546). *See Notice of Countervailing Duty Order: Dynamic Random Access Memory Semiconductors From the Republic of Korea*, 68 FR 47546 (August 11, 2003) (''*CVD Order*''). On July 1, 2008, the Department initiated a sunset review of this order. *See Initiation of Five-year (''Sunset'') Review*, 73 FR 37411 (July 1, 2008).

On July 16, 2008, we received a notice of intent to participate from Micron Technology, Inc. (''Micron''), a domestic interested party. On July 22, 2008, we informed the U.S. International Trade Commission (''ITC'') that there was domestic interest in continuation of the order. However, Micron did not file a substantive response by July 31, 2008, which was 30 days after the date of publication of the initiation notice in the **Federal Register**. Also, on August 1, 2008, Micron submitted a letter stating that it was withdrawing its notice of intent to participate in this sunset review. On August 19, 2008, we notified the ITC that we did not receive a substantive response from the domestic interested party by the applicable deadline and that we intend to revoke the order not later than 90 days after the initiation of the sunset review.

Scope of the Order

The products covered by this order are DRAMS from the ROK, whether assembled or unassembled. Assembled DRAMS include all package types. Unassembled DRAMS include processed wafers, uncut die, and cut die. Processed wafers fabricated in the ROK, but assembled into finished semiconductors outside the ROK are also included in the scope. Processed wafers fabricated outside the ROK and assembled into finished semiconductors in the ROK are not included in the scope.

The scope of this order additionally includes memory modules containing DRAMS from the ROK. A memory module is a collection of DRAMS, the sole function of which is memory. Memory modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, small outline dual in-line memory modules, Rambus in-line memory modules, and memory cards or other collections of DRAMS, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items which alter the function of the module to something other than memory, such as video graphics adapter boards and cards, are not included in the scope. This order also covers future DRAMS module types.

The scope of this order additionally includes, but is not limited to, video random access memory and synchronous graphics random access memory, as well as various types of DRAMS, including fast page-mode, extended data-out, burst extended data-out, synchronous dynamic RAM, Rambus DRAM, and Double Data Rate DRAM. The scope also includes any future density, packaging, or assembling of DRAMS. Also included in the scope of this order are removable memory modules placed on motherboards, with or without a central processing unit, unless the importer of the motherboards certifies with CBP that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this order does not include DRAMS or memory modules that are re-imported for repair or replacement.

The DRAMS subject to this order are currently classifiable under subheadings 8542.21.8005, 8542.21.8020 through 8542.21.8030, and 8542.32.0001 through 8542.32.0023 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The memory modules containing DRAMS from the ROK, described above, are currently classifiable under subheadings 8473.30.1040, 8473.30.1080, 8473.30.1140, and 8473.30.1180 of the HTSUS. Removable memory modules placed on motherboards are classifiable under subheadings 8443.99.2500, 8443.99.2550, 8471.50.0085, 8471.50.0150, 8517.30.5000, 8517.50.1000, 8517.50.5000, 8517.50.9000, 8517.61.0000, 8517.62.0010, 8517.62.0050, 8517.69.0000, 8517.70.0000, 8517.90.3400, 8517.90.3600, 8517.90.3800, 8517.90.4400, 8542.21.8005, 8542.21.8020, 8542.21.8021, 8542.21.8022, 8542.21.8023, 8542.21.8024, 8542.21.8025, 8542.21.8026, 8542.21.8027, 8542.21.8028, 8542.21.8029, 8542.21.8030, 8542.31.0000, 8542.33.0000, 8542.39.0000, 8543.89.9300, and 8543.89.9600 of the HTSUS. However, the product description, and not the HTSUS classification, is dispositive of whether merchandise imported into the United States falls within the scope.

Scope Rulings

On December 29, 2004, the Department received a request from Cisco Systems, Inc. (''Cisco''), to determine whether removable memory modules placed on motherboards that are imported for repair or refurbishment are within the scope of the order. *See CVD Order*. The Department initiated a scope inquiry pursuant to 19 CFR 351.225(e) on February 4, 2005. On January 12, 2006, the Department issued a final scope ruling, finding that removable memory modules placed on motherboards that are imported for repair or refurbishment are not within the scope of the *CVD Order* provided that the importer certifies that it will destroy any memory modules that are removed for repair or refurbishment. *See* Memorandum from Stephen J. Claeys to David M. Spooner, regarding *Final Scope Ruling, Countervailing Duty Order on DRAMs From the Republic of Korea* (January 12, 2006).

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act, 19 CFR 351.218(d)(1)(iii)(B)(3), and 19 CFR 351.218(e)(1)(i)(C)(3), if no domestic interested party files a notice of intent to participate in a five-year review or does not file an adequate response, the Department shall, within 90 days after the initiation of the review, issue a final determination revoking the order. As noted above, the domestic interested party did not file a substantive response and withdrew its original notice of intent to participate. As a result, no domestic interested party is participating in this sunset review. Therefore, consistent with 19 CFR 351.222(i)(1)(i) and section 751(c)(3) of the Act, we are revoking this countervailing duty order. The effective date of revocation is August 11, 2008, the fifth anniversary of the date on which the Department published the countervailing duty order. *See* 19 CFR 351.222(i)(2)(i).

Effective Date of Revocation

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.222(i)(2)(i), the Department will instruct U.S. Customs and Border Protection to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after August 11, 2008. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping and countervailing duty deposit requirements. The Department will complete any pending administrative

reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

The five-year (sunset) review and this notice are in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: September 29, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–23394 Filed 10–2–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–861, A–580–850, A–570–879]

Polyvinyl Alcohol From Japan, the Republic of Korea, and the People's Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 5, 2008, the Department of Commerce (the Department) initiated sunset reviews of the antidumping duty orders on polyvinyl alcohol (PVA) from Japan, the Republic of Korea (Korea), and the People's Republic of China (PRC) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department has conducted expedited (120-day) sunset reviews for these orders pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping.

DATES: *Effective Date:* October 3, 2008.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Miriam Eqab, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3874 and (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION

Background

On June 5, 2008, the Department published the notice of initiation of the sunset reviews of the antidumping duty orders on PVA from Japan, Korea, and the PRC pursuant to section 751(c) of the Act. *See Initiation of Five-Year (''Sunset'') Reviews,* 73 FR 31974 (June 5, 2008) (*Notice of Initiation*).

The Department received notices of intent to participate from Celanese Chemicals, Ltd. and E.I. Dupont de Nemours & Co. (collectively, ''the domestic interested parties'') within the deadline specified in 19 CFR 351.218(d)(1)(i). The companies claimed interested party status under section 771(9)(C) of the Act as manufacturers of a domestic like product in the United States. The Department also received a notice of intent to participate from two Japanese respondent interested parties: The Nippon Synthetic Chemical Industry Co., Ltd. and Marubeni Specialty Chemicals Inc. The companies claimed interested party status under section 771(9)(A) of the Act as a foreign producer and a U.S. importer, respectively, of the subject merchandise.

The Department received complete substantive responses to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to any of the orders covered by these sunset reviews, nor was a hearing requested. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department is conducting expedited (120-day) sunset reviews of the antidumping duty orders for Japan, Korea, and the PRC.

Scope of the Orders

The merchandise covered by these orders is PVA. This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of these orders:

(1) PVA in fiber form.

(2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.

(3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.

(4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.

(5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.

(6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.

(8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material.

(9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.

(11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(15) PVA covalently bonded with diacetoneacrylamide uniformly present on all polymer chains in a concentration level greater than three mole percent, certified for use in a paper application.

The merchandise subject to these orders is currently classifiable under subheading 3905.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the ''Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Polyvinyl Alcohol from Japan, the Republic of Korea, and the People's Republic of China'' from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration (September 29, 2008) (Decision Memo), which is

hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 1117 of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on PVA from Japan, Korea, and the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/exporters/ producers	Weighted-average margin (percent)
Japan:	
Denki Kagaku Kogyo Kabushiki Kaisha	144.16
Japan VAM & POVAL Co., Ltd	144.16
Kuraray Co., Ltd	144.16
The Nippon Synthetic Chemical Industry Co., Ltd	144.16
All-Others Rate	76.78
Korea:	
DC Chemical Company, Ltd	38.74
All-Others Rate	32.08
PRC:	
Sinopec Sichuan Vinylon Works	5.51
PRC-Wide Rate	97.86

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: September 29, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–23455 Filed 10–2–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 3, 2008.

SUMMARY: The Department of Commerce (the Department) is currently conducting a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) covering the period February 1, 2007, through February 29, 2008. We preliminarily determine that the sale made by Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd. (Golden Banyan), was not made below normal value (NV). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of subject merchandise during the period of review (POR) for any importer-specific assessment rates that are above *de minimis*.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2924 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from the PRC. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From the People's Republic of China*, 64 FR 8308 (February 19, 1999) (*Order*). On February 29, 2008, we received a timely new shipper review request in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Tariff Act), and 19 CFR 351.214(c), from exporter and producer, Golden Banyan.[1] On April 7, 2008, the Department published a notice in the **Federal Register** initiating a new shipper review for Golden Banyan. *See Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Review*, 73 FR 18772 (April 7, 2008) (*Initiation Notice*).

We issued the standard antidumping duty questionnaire, along with the standard importer questionnaire for new shipper reviews, on April 8, 2008, and received responses in May and June 2008. We issued supplemental questionnaires covering sections A, C, and D of the original questionnaire on July 8, 2008, August 7, 2008, and August 22, 2008, respectively, and received timely responses to those questionnaires.

Period of Review

The POR covers February 1, 2007, through February 29, 2008.[2]

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. ''Certain Preserved Mushrooms'' refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to

[1] In its request for review, Golden Banyan indicated that it had applied to the Zhangzhou Municipal Industrial and Commercial Administrative Bureau (Commercial Administrative Bureau) to change its name to Fujian Golden Banyan Foodstuffs Industrial Co., Ltd. On December 21, 2007, the Commercial Administrative Bureau granted Golden Banyan advanced approval for the company's requested name change. At the time it submitted the request for new shipper review, however, Golden Banyan was still waiting for the name change to apply to the company's business license and certificate of approval.

[2] As we indicated in the initiation notice, Golden Banyan's shipment entered the United States shortly after the anniversary month. Therefore, for the reasons given in the initiation notice, we extended the POR to include Golden Banyan's shipment. *See Initiation Notice* at 18772.

provisionally preserve them for further processing.[3]

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

Bona Fide Analysis

Consistent with the Department's practice, we investigated the *bona fide* nature of the sale made by Golden Banyan for this new shipper review. In evaluating whether a single sale in a new shipper review is commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis. *See Tianjin Tiancheng Pharm. Co., Ltd.* v. *United States*, 366 F. Supp. 2d 1246, 1250 (CIT 2005). Accordingly, the Department considers a number of factors in its *bona fide* analysis, ''all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.'' *See Hebei New Donghua Amino Acid Co., Ltd.* v. *United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*citing Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002) and accompanying Issues and Decision Memorandum).

We preliminarily find that the U.S. sale made by Golden Banyan during the POR was made on a *bona fide* basis. Specifically, we find: (1) The timing of the sale does not indicate the sale might not be *bona fide*; (2) the price and quantity of the sale were within the range of the prices and quantities of other entries of subject merchandise from the PRC into the United States during the POR, based upon the Department's review of data obtained from CBP; (3) Golden Banyan and its customer did not incur any extraordinary expenses arising from the transaction; (4) the sale was resold at a profit; and (5) the sale was made between unaffiliated parties at arm's-length. *See* Memorandum from Fred Baker, International Trade Compliance Analyst, to The File via Robert James, Program Manager, Office 7, ''*Bona Fide* Sales Analysis for Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd.,'' dated concurrently with this notice.

Based on our review of the record evidence concerning the *bona fide* nature of this sale, as well as Golden Banyan's eligibility for a separate rate (*see* ''Separate Rates Determination'' section, below) and the Department's determination that the seller was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that Golden Banyan has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results, we are treating the sale of subject merchandise to the United States as an appropriate transaction for this new shipper review.

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, we have treated the PRC as a non-market economy (NME) country. *See e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). In accordance with section 771(18)(C)(i) of the Tariff Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding have contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Tariff Act, which applies to NME countries.

Separate Rates Determination

A designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Tariff Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control, and thus should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), (*Sparklers*) as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

Absence of De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

In the instant review, Golden Banyan submitted a complete response to the separate rates section of the Department's questionnaire. The evidence submitted in the instant review by Golden Banyan includes government laws and regulations on corporate ownership and control, business licenses, and narrative information regarding the company's operations and selection of management. The evidence provided by Golden Banyan supports a preliminary finding of a *de jure* absence of government control over its export activities because: (1) There are no controls on exports of subject merchandise, such as quotas applied to, or licenses required for, exports of the subject merchandise to the United States; and (2) legislative enactments exist decentralizing control of companies. *See* Golden Banyan's

[3] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* Recommendation Memorandum—Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000. On February 9, 2005, the United States Court of Appeals for the Federal Circuit upheld this decision. *See Tak Fat* v. *United States*, 396 F.3d 1378 (Fed. Cir. 2005).

February 29, 2008, submission at pages 5–7 and Exhibits 3–4.

Absence of De Facto Control

The absence of *de facto* government control over exports generally is based on whether the respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22586–87; *Sparklers*, 56 FR at 20589; and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

In its February 29, 2008, submission, Golden Banyan submitted evidence demonstrating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates: (1) The company sets its own export prices independent of the government and without the approval of a government authority; (2) the company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) the company has a general manager and a sales manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors, and the general manager appoints the manager of each department; and (5) there is no restriction on the company's use of export revenues. Therefore, we preliminarily find that Golden Banyan has established *prima facie* that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Surrogate Country

When the Department investigates imports from an NME country, section 773(c)(1) of the Tariff Act directs it to base NV, in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Tariff Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this new shipper review are discussed under the ''Normal Value'' section, below. On June 16, 2008, the Department determined that India, Indonesia, the Philippines, Colombia, and Thailand are countries comparable to the PRC in terms of economic development, and requested comments from interested parties on selecting the appropriate surrogate country for this review. *See* Letter to All Interested Parties, RE: New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China: Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd., dated July 16, 2008. No party submitted surrogate country selection comments.

The Department has examined the export levels [4] of subject merchandise from the above-mentioned countries and found that India and Indonesia are significant producers of comparable merchandise. *See* Memorandum from Fred Baker, International Trade Compliance Analyst, to Richard Weible, Office Director, ''Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China: Selection of a Surrogate Country,'' dated concurrently with this notice (Surrogate Country Memorandum) at 4. However, since India has exports in both of the HTS subheadings identified for subject merchandise, while Indonesia has exports under only one of the HTS subheadings, we find that the Indian export data are more comprehensive and representative of subject merchandise than Indonesian export data. *Id.* at 5.

In selecting the appropriate surrogate country, the Department examines the availability and reliability of data from the countries deemed to be economically comparable and significant producers of subject merchandise. For a description of our practice, *see* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004). India has been the primary surrogate country in numerous past segments for this proceeding. In those past segments, the Department found India's import statistics to be an available and reliable source for surrogate values. *Id.* at 4. Therefore, since India: (1) Is a significant producer of comparable merchandise, whose production of subject merchandise is more comprehensive than Indonesia's production; (2) is at a similar level of economic development as the PRC; (3) has publicly available and reliable data, which the Department has relied upon for numerous segments of this proceeding; and, (4) India's data are more comprehensive and more representative of the subject merchandise than the data provided for Indonesia, the Department has selected India as the surrogate country, pursuant to section 773(c)(4) of the Tariff Act. *See* Surrogate Country Memorandum at 5.

Fair Value Comparisons

To determine whether Golden Banyan's sale of subject merchandise to the United States was made at a price below NV, we compared its U.S. price to NV, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice, below.

U.S. Price

In accordance with section 772(a) of the Tariff Act, we based U.S. price on the export price (EP) of the sale to the United States by Golden Banyan because the first sale to an unaffiliated party was made before the date of importation and the use of constructed export price was not otherwise warranted. We calculated EP based on the free-on-board (FOB) price to the first unaffiliated purchaser in the United States. For this EP sale, we deducted foreign inland freight and foreign brokerage and handling from the starting price (or gross unit price), in accordance with section 772(c) of the Tariff Act. For Golden Banyan's U.S. sale, each of these services was provided by an NME vendor. Thus, we based the deduction of these movement charges on surrogate values. We valued truck freight expenses using a per-unit average rate calculated from data on the following Web site: *http://www.infobanc.com/logistics/logtruck.htm*. The logistics section of this web site contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POR, we deflated the rate using the wholesale price index (WPI). *See* Memorandum from Fred Baker, International Trade Compliance Analyst, through Robert James, Program Manager, to the File, ''New Shipper Review of Certain Preserved Mushroom from the People's Republic of China: Surrogate Values for the Preliminary Results'' (Surrogate Values Memorandum) at Exhibit 6. We valued foreign brokerage and handling with the publicly summarized brokerage and handling expense reported in the U.S. sales listing of Indian mushroom producer, Agro Dutch Industries, Ltd.

[4] The Department was unable to find world production data for subject merchandise and relied on export data as a substitute for overall production.

(Agro Dutch), in the 2004–2005 administrative review of Certain Preserved Mushrooms from India. *See* Surrogate Values Memorandum at Exhibit 6.

Normal Value

1. Methodology

Section 773(c)(1)(B) of the Tariff Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Tariff Act. The Department bases NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 70 FR 39744 (July 11, 2005), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517 (January 17, 2006).

We calculated NV by adding together the value of the FOPs, general expenses, profit, and packing costs. The FOPs for subject merchandise include: (1) Quantities of raw materials employed; (2) hours of labor required; (3) amounts of energy and other utilities consumed; (4) representative capital and selling costs; and (5) packing materials. We used the FOPs reported by Golden Banyan for materials, energy, labor, and packing, and valued those FOPs by multiplying the amount of the factor consumed in producing subject merchandise by the average unit surrogate value of the factor.

In accordance with 19 CFR 351.408(c)(1), when a producer sources an input from a market-economy country and pays for it in a market-economy currency, the Department will normally value the FOP using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see also Lasko Metal Products* v. *United States,* 43 F.3d 1442, 1445–1446 (Fed. Cir. 1994) (affirming the Department's use of market-based prices to value certain FOPs). The Department has instituted a rebuttable presumption that market economy input prices are the best available information for valuing an input when the total volume of the input purchased from all market economy sources during the period of investigation or review is 33 percent or greater of the total volume of the input purchased from all sources during the period. In such cases, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted-average market economy purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from market economy suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the market economy purchase price with an appropriate surrogate value according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption in favor of using market-economy prices. When an NME firm has made market economy input purchases that may have been dumped or subsidized, are not *bona fide,* or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the total quantity of all market economy purchases to ensure a fair determination of whether valid market economy purchases meet the 33 percent threshold. *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716 (October 19, 2006). In this case, Golden Banyan reported that it did not purchase any inputs from market economy sources.

In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. Where there were multiple domestic suppliers of a material input, we calculated a weighted-average distance after limiting each supplier's distance to no more than the distance from the nearest seaport to Golden Banyan. This adjustment is in accordance with the decision by the Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). We increased the calculated costs of the FOPs for surrogate general expenses and profit. *See* Surrogate Values Memorandum.

2. Selection of Surrogate Values

In selecting surrogate values, we followed, to the extent practicable, the Department's practice of choosing public values which are non-export averages, representative of a range of prices in effect during the POR, or over a period as close as possible in time to the POR, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004). We also considered the quality of the source of surrogate information in selecting surrogate values. *See Manganese Metal From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 63 FR 12440 (March 13, 1998). Where we could obtain only surrogate values that were not contemporaneous with the POR, we inflated (or deflated) the surrogate values using, where appropriate, the Indian WPI as published in *International Financial Statistics* by the International Monetary Fund. *See* Surrogate Values Memorandum at Exhibit 1.

In calculating surrogate values from import statistics, in accordance with the Department's practice, we disregarded statistics for imports from NME countries and countries deemed to maintain broadly available, non-industry-specific subsidies which may benefit all exporters to all export markets (*e.g.*, Indonesia, South Korea, and Thailand). *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China,* 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 1. *See also Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 68 FR 66800, 66808 (November 28, 2003), unchanged in *Notice of Final*

Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004). Additionally, we excluded from our calculations imports that were labeled as originating from an unspecified country because we could not determine whether they were from an NME country.

We valued production material inputs (mushroom spawn, rice straw, and manure) using the fiscal year (FY) 2006–2007 (April 2006 through March 2007) financial statements of Agro Dutch or Flex Foods Ltd. (Flex Foods), Indian producers of mushrooms and vegetables, as follows. To value the input of mushroom spawn, we used data from the FY 2004–2005 financial statement of Agro Dutch because Agro Dutch's mushroom spawn value is specific to the species *Agaricus bisporous,* which is the species used to produce subject merchandise. To value the input of rice straw, we used the rice straw value from the FY 2006–2007 financial statement of Flex Foods because this value is specific to the input. Similarly, to value the input of manure, we used the manure value from the FY 2004–2005 financial statement of Agro Dutch because this value is specific to the input. *See* Surrogate Values Memorandum at Exhibit 2.

We valued processing and canning material inputs (super calcium phosphate, calcium carbonate, spawn, refined salt, citric acid, tin plate, copper wire, and sealing glue) using weighted-average Indian import values derived from the World Trade Atlas online (WTA), for the period February 2007 through January 2008. *See* Surrogate Values Memorandum at Exhibits 2 and 3. In addition, we valued packing material inputs (corrugated boxes, labels, paper board, hard paper board, adhesive tape, and glue) with weighted-average Indian import values derived from the WTA for the period February 2007 through January 2008. *Id.* at Exhibit 5. The Indian import statistics obtained from the WTA were published by the Indian Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India and are contemporaneous with the POR. As the Indian surrogate values were denominated in rupees, in accordance with section 773A(a) of the Tariff Act, they were converted to U.S. dollars using the official exchange rate for India recorded on the date of sale of subject merchandise in this case. *See http://www.ia.ita.doc.gov/exchange/index.html.*

To value land rent, the Department used data from the *2001 Punjab State Development Report,* administered by the Planning Commission of the Government of India. Since the value of land rent was not contemporaneous with the POR, the Department adjusted the value for inflation. *See* Surrogate Values Memorandum at Exhibit 2.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India,* dated July 2006. These electricity rates represent actual country-wide publicly-available information on tax-exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous with the POR, we inflated the values using the WPI. *See Surrogate Value Memorandum* at Exhibit 3.

To value water, the Department used data from the Maharastra Industrial Development Corporation (*http://www.midcindia.org*) for June 2003, which we found to be the best available information since it includes a wide range of industrial water rates. Since the water rates were not contemporaneous with the POR, the Department adjusted the value for inflation. *See Surrogate Values Memorandum* at Exhibit 4.

We valued truck freight expenses for inputs the same surrogate data we used for valuing domestic inland freight for Golden Banyan's U.S. sale (*i.e.*, we used data from the Web site *http://www.infobanc.com/logistics/logtruck.htm,* which contains inland freight truck rates between many large Indian cities). Since these values are not contemporaneous with the POR, we deflated the rate using the WPI. *See* Surrogate Values Memorandum at Exhibit 6.

The Department's regulations require the use of a regression-based wage rate. *See* 19 CFR 351.408(c)(3). Therefore, to value labor, the Department used the regression-based wage rate for the PRC published on the Import Administration Web site. *See* the IA Web site: *http://ia.ita.doc.gov/wages/05wages/05wages-041608.html,* and *see Corrected 2007 Calculation of Expected Non-Market Economy Wages,* 73 FR 27795 (May 14, 2008).

To value the surrogate financial ratios for factory overhead (OH), selling, general & administrative (SG&A) expenses, and profit, the Department used the 2006–2007 financial statements of Agro Dutch and Flex Foods. The Department notes that Agro Dutch is a producer of mushrooms, and Flex Foods is a producer of mushrooms and vegetable products. Therefore, Agro Dutch's and Flex Foods' financial ratios for OH and SG&A are comparable to Golden Banyan's financial ratios because Agro Dutch's and Flex Foods' production experience is comparable to Golden Banyan's production experience by virtue of each company's production of subject merchandise. Additionally, the financial statements of these two companies are contemporaneous for two months of the POR. Moreover, an average of the financial statements of Agro Dutch and Flex Foods represents a broader spectrum of the Indian mushroom industry, than the financial statement of a single mushroom producer. *See* Surrogate Values Memorandum at Exhibit 8.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Tariff Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates can be accessed at the Web site of Import Administration at *http://ia.ita.doc.gov/exchange/index.html.*

Preliminary Results of Review

We preliminarily determine that the following margin exists during the period February 1, 2007, through February 29, 2008:

Manufacturer/exporter	Margin (percent)
Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd. (Golden Banyan)	0.00

Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of publication of these preliminary results. Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1). Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette

containing the public version of those comments.

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the briefs.

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of the Tariff Act, the Department will issue the final results of this new shipper review, including the results of our analysis of the issues raised by the parties in their comments, within 90 days of publication of these preliminary results.

Assessment Rates

Upon issuing the final results of the review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. However, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements, when imposed, will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise exported by Golden Banyan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act: (1) For subject merchandise manufactured and exported by Golden Banyan, the cash-deposit rate will be that established in the final results of this review; (2) for subject merchandise exported by Golden Banyan but not manufactured by Golden Banyan, the cash deposit rate will continue to be the PRC-wide rate (*i.e.*, 198.63 percent); and (3) for subject merchandise manufactured by Golden Banyan but exported by any other party, the cash deposit rate will be the rate applicable to the exporter. If the cash deposit rate calculated for Golden Banyan in the final results is zero or *de minimis*, a zero cash deposit will be required for entries of subject merchandise both produced and exported by Golden Banyan. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and notice are in accordance with sections 751(a)(2)(B) and 777(i) of the Tariff Act and 19 CFR 351.214(h)(i).

Dated: September 29, 2008.

David Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–23396 Filed 10–2–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–808]

Suspension of Antidumping Investigation: Certain Cut-to-Length Carbon Steel Plate From Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revised suspension agreement on certain cut-to-length carbon steel plate from Ukraine.

EFFECTIVE DATE: November 1, 2008.

SUMMARY: The Department of Commerce (''the Department'') has revised the agreement suspending the antidumping duty investigation involving certain cut-to-length carbon steel plate (''CTL plate'') from Ukraine. The basis for this action is an agreement between the Department and Ukrainian CTL plate producers accounting for substantially all imports of CTL plate from Ukraine, wherein each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the normal value (NV) of this merchandise exceeds the U.S. price of its merchandise subject to the Agreement.

FOR FURTHER INFORMATION CONTACT: Judith Wey Rudman or Jay Carreiro at (202) 482–0192 or (202) 482–3674, respectively; Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 1997, the Department entered into an agreement with the Government of Ukraine which suspended the antidumping duty investigation on certain cut-to-length carbon steel plate (CTL plate) from Ukraine. *See Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate from Ukraine,* 62 FR 61766 (November 19, 1997). In accordance with section 734(g) of the Tariff Act of 1930 (the Act), on November 19, 1997, the Department also published its final determination of sales at less than fair value in this case. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine,* 62 FR 61754 (November 19, 1997).

On February 17, 2006, based on the evidence of economic reforms to that date, the Department revoked Ukraine's status as a non-market economy country under section 771(18)(B) of the Act, effective on February 1, 2006. Based on a request by certain Ukrainian producers of CTL plate, we are converting the current non-market economy suspension agreement to a market economy agreement. On August 5, 2008, representatives of OJSC Alchevsk Iron & Steel Works, Azovstal Iron & Steel Works, and Ilyich Iron & Steel Works (collectively the ''Ukrainian CTL plate producers'') initialed a proposed, revised suspension agreement. We invited interested parties to comment on the proposed agreement. We received no comments.

On September 29, 2008, the revised Suspension Agreement was signed by

representatives of the Ukrainian CTL plate producers and the Department. The effective date of the agreement is November 1, 2008.

Scope of the Agreement

For a complete description of the scope of the agreement, *See Agreement Suspending the Antidumping Investigation on Certain Cut-to-Length Carbon Steel Plate from Ukraine,* Appendix A, attached hereto.

Suspension of Investigation

The Department consulted with the parties to the proceeding and, in accordance with section 734(b) of the Act, we have determined that the agreement will eliminate completely sales at less than fair value of imported subject merchandise. Moreover, in accordance with section 734(d) of the Act, we find that the agreement is in the public interest, and that the agreement can be monitored effectively. *See Public Interest and Effective Monitoring Assessment Memorandum,* dated September 29, 2008. We find, therefore, that the criteria for suspension of an investigation pursuant to sections 734(b) and (d) of the Act have been met. The terms and conditions of this agreement, signed September 29, 2008, are set forth in Appendix I to this notice.

Administrative Protective Order Access

The Administrative Protective Orders (APOs) the Department granted in the original investigation segment of this proceeding remain in place. While the investigation is suspended, parties subject to those APOs may retain, but may not use, information received under those APOs. All parties wishing access to business proprietary information submitted during the administration of the 2008 Suspension Agreement must submit new APO applications, using the Department's current application, Form ITA–367(2.08). An APO for the administration of the 2008 Suspension Agreement will be placed on the record within five days of the date of publication of this notice in the **Federal Register**.

Business proprietary information released under APO in the 1997 *Suspension of Antidumping Duty Investigation: Certain Cut-to-Length Carbon Steel Plate from Ukraine* must be destroyed in accordance with item 19(d) of the Department's application for APO, Form ITA–367 (3.89).

We are publishing this notice in accordance with section 734(f)(1)(A) of the Act and 19 CFR 351.208(g)(2).

Dated: September 29, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

APPENDIX I

Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate From Ukraine (A–823–808)

Pursuant to section 734(b) of the Tariff Act of 1930, as amended (19 U.S.C. § 1673c(b)) (the ''Act''), and 19 CFR 351.208 (the ''Regulations''), the U.S. Department of Commerce (the ''Department'') and the signatory producers/exporters of certain cut-to-length carbon steel plate from Ukraine (the ''Signatories'') enter into this suspension agreement (the ''Agreement''). As of the effective date, this Agreement supersedes the suspension agreement entered into by the Department and the Government of Ukraine on October 24, 1997. By agreement of the Parties, the October 24, 1997 suspension agreement shall cease to have force or effect as of the effective date of this Agreement.[1] On the basis of this Agreement, the Department shall continue to suspend its antidumping investigation, which it completed on October 24, 1997 (62 FR 61754, November 19, 1997), with respect to certain cut-to-length carbon steel plate from Ukraine, subject to the terms and provisions set forth below.

(A) Product Coverage

For purposes of this Agreement, the products covered are certain cut-to-length carbon steel plate, as described in Appendix A.

(B) U.S. Import Coverage

The signatory producers/exporters collectively are the producers and exporters in Ukraine that, during the most recently completed calendar year, accounted for substantially all (not less than 85 percent) of the subject merchandise imported into the United States, as provided in the Department's regulations. The Department may at anytime during the period of the Agreement require additional producers/exporters in Ukraine to sign the Agreement in order to ensure that not less than substantially all imports into the United States are covered by the Agreement.

In reviewing the operation of the Agreement for the purpose of determining whether this Agreement has been violated or is no longer in the public interest, the Department will consider imports into the United States from all sources of the merchandise described in Section A of the Agreement. For this purpose, the Department will consider factors including, but not limited to, the following: volume of trade, pattern of trade, whether or not the reseller is an original equipment manufacturer, and the reseller's export price (''EP'').

[1] However, the export licenses issued prior to the effective date of this agreement will be valid until their expiration date (*i.e.* 60 days after issuance) pursuant to the terms of the October 24, 1997 suspension agreement.

(C) Basis of the Agreement

On and after the effective date of the Agreement, each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the normal value (''NV'') of this merchandise exceeds the U.S. price of its merchandise subject to the Agreement. For this purpose, the Department will determine the NV in accordance with section 773(e) of the Act and U.S. price in accordance with section 772 of the Act.

(1) For the period from the effective date of this Agreement through the release of the first NVs, each signatory producer/exporter agrees not to sell its merchandise subject to this Agreement in the United States.

(2) For all sales occurring on and after the date of issuance of the first NVs, each signatory producer/exporter agrees not to sell its merchandise subject to this Agreement to any unaffiliated purchaser in the United States at prices that are less than the NV of the merchandise, as determined by the Department. These NVs shall apply to sales occurring during the semi-annual period (*i.e.*, January through June and July through December), beginning on the first day of the month following the date the Department provides the NVs, except that for the period from the effective date of this Agreement through December 31, 2008, the NVs are applicable on the effective date of this Agreement or upon issuance of the final NVs, whichever comes later.

(3) Normally, preliminary NVs for the January through June semi-annual period will be provided to the parties on November 20 and the final NVs will be provided to the parties on December 20. Normally, the preliminary NVs for the July through December semi-annual period will be provided to the parties on May 20 and the final NVs will be provided to the parties on June 20.[2]

(D) Monitoring

Each signatory producer/exporter will supply to the Department all information that the Department decides is necessary to ensure that the producer/exporter is in full compliance with the terms of the Agreement. As explained below, the Department will provide each signatory producer/exporter a detailed request for information and prescribe a required format and method of

[2] The issuance of the NV may be delayed in order to resolve issues raised in comments from interested parties or by the Department and for the purpose of allowing sufficient time for signatories to respond to the Department's request for sales and cost data. In accordance with section 773(f) of the Act, the Department will examine prices and costs within Ukraine and, for any sales period, may disregard particular prices or costs when the prices are not in the ordinary course of trade, the costs are not in accordance with the generally accepted accounting principles, the costs do not reasonably reflect the costs associated with the production and sale of the merchandise, or in other situations provided for in the Act or the Department's regulations. Examples of possible areas in which adjustments may be necessary include, but are not limited to, costs related to energy, depreciation, transactions among affiliates, barters, as well as items that are not recognized by the home country's generally accepted accounting principles.

data compilation, not later than the beginning of each reporting period.

(1) Sales Information

The Department will require each producer/exporter to report, in electronic form in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to the Agreement, either directly or indirectly to unaffiliated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

Each signatory producer/exporter requesting NVs as of the effective date of the Agreement through December 31, 2008 will have submitted sales data, covering the period from July 1, 2007 to December 31, 2007, prior to the effective date of this Agreement. Each signatory producer/exporter requesting NVs to be effective from January 1, 2009 to June 30, 2009 will have submitted sales data, covering the period from January 1, 2008 to June 30, 2008, prior to the effective date of this Agreement. After the effective date of this Agreement, the first report of sales data shall be submitted to the Department, in electronic form (*e.g.*, on diskette, zip disk, or CD ROM) in the prescribed format and using the prescribed method of data compilation, not later than January 31, 2009, and shall contain the specified sales information covering the period July 1, 2008 to December 31, 2008. Subsequent reports of sales data shall be submitted to the Department not later than July 31 and January 31 of each year, and each report shall contain the specified sales information for the semiannual period ending one month prior to the due date, except that if the Department receives information that a possible violation of the Agreement may have occurred, the Department may request sales data on a more frequent basis.

(2) Cost Information

Producers/exporters must request NVs for all subject merchandise that will be sold in the United States. For those products for which the producer/exporter is requesting NVs, the Department will require each producer/exporter to report: its actual cost of manufacturing; selling, general and administrative (''SG&A'') expenses; and profit data on a semiannual basis, in the prescribed format and using the prescribed method of data compilation. As indicated in Appendix B, profit will be reported by the producers/exporters on a semiannual basis. Each such producer/exporter also must report anticipated increases in production costs in the semiannual period in which the information is submitted resulting from factors such as anticipated changes in production yield, changes in production processes, changes in production quantities or changes in production facilities.

Each signatory producer/exporter requesting NVs as of the effective date of the Agreement through December 31, 2008 will have submitted cost data, covering the period from July 1, 2007 to December 31, 2007, prior to the effective date of this Agreement. Each signatory producer/exporter requesting NVs for the period January 1, 2009 to June 30, 2009 will have submitted cost data, covering the period from January 1, 2008 to June 30, 2008, prior to the effective date of this Agreement. After the effective date of this Agreement, the first report of cost data shall be submitted to the Department not later than February 14, 2009, and shall contain the specified cost data covering the period July 1, 2008 to December 31, 2008. Each subsequent report shall be submitted to the Department not later than August 14 and February 14 of each year, and each report shall contain the specified information for the semiannual period ending 45 days prior to the due date.

(3) Special Adjustment of Normal Value

If the Department determines that the NV it calculated for a previous semiannual period was erroneous because the reported costs for that period were inaccurate or incomplete, or for any other reason, the Department may adjust the NV in a subsequent period or periods, unless the Department determines that Section F of the Agreement applies.

(4) Verification

Each producer/exporter agrees to permit full verification of all cost and sales information semiannually, or more frequently, as the Department deems necessary.

(5) Bundling or Other Arrangements

Producers/exporters agree not to circumvent the Agreement. In accordance with the dates set forth in section D(1) of this Agreement, producers/exporters will submit a written statement to the Department certifying that the sales reported herein were not, or are not part of or related to, any bundling arrangement, on-site processing arrangement, discounts/free goods/financing package, swap or other exchange where such arrangement is designed to circumvent the basis of the Agreement.

Where there is reason to believe that such an arrangement does circumvent the basis of the Agreement, the Department will request producers/exporters to provide within 15 days all particulars regarding any such arrangement, including, but not limited to, sales information pertaining to covered and non-covered merchandise that is manufactured or sold by producers/exporters. The Department will accept written comments, not to exceed 30 pages, from all parties no later than 15 days after the date of receipt of such producer/exporter information.

If the Department, after reviewing all submissions, determines that such arrangement circumvents the basis of the Agreement, it may, as it deems most appropriate, utilize one of two options: (1) The amount of the effective price discount resulting from such arrangement shall be reflected in the NV in accordance with section D(3) of this Agreement, or (2) the Department shall determine that the Agreement has been violated and take action according to the provisions under section F of this Agreement.

(6) Rejection of Submissions

The Department may reject any information submitted after the deadlines set forth in this section or any information that it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may calculate NV, and/or U.S. price based on facts otherwise available, as it determines appropriate, unless the Department determines that section F of this Agreement applies.

(E) Disclosure and Comment

(1) The Department may make available to representatives of each interested party to the proceeding, under appropriately drawn administrative protective orders, business proprietary information submitted to the Department during the reporting period as well as the results of its analysis under section 777 of the Act.

(2) For the sales period beginning on January 1, 2009, the Department will disclose to each producer/exporter the preliminary results and methodology of the Department's calculations of its NVs not later than November 20, 2008. At that time, the Department may also make available such information to the interested parties to the proceeding in accordance with this section.

(3) Normally, not later than May 20 and November 20 of each ensuing sales period, the Department will disclose to each producer/exporter the preliminary results and methodology of the Department's calculations of its NVs. At that time, the Department may also make available such information to the interested parties to the proceeding, in accordance with this section.

(4) Not later than 7 days after the date of disclosure under section E(2) and E(3) of this Agreement, the parties to the proceeding may submit written comments to the Department, not to exceed 15 pages. Parties may submit rebuttal briefs within five days after the time limit for filing the aforementioned written comments. After reviewing these submissions, the Department will provide to each producer/exporter its NVs as provided in section C(2) of this Agreement. In addition, the Department may provide such information to interested parties as specified in this section.

(F) Violations of the Agreement

If the Department determines that the Agreement is being or has been violated or no longer meets the requirements of section 734(b) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the applicable regulations.

(G) Other Provisions

In entering into the Agreement, the signatory producers/exporters do not admit that any sales of merchandise subject to the Agreement have been made at less than fair value.

(H) Termination or Withdrawal

Termination of the suspended investigation will be considered in accordance with the five-year review provisions of section 351.218 of the Department's regulations.

Any producer/exporter may withdraw from the Agreement at any time upon notice to the Department. Withdrawal shall be effective 60 days after such notice is given to the Department. Upon withdrawal, the

Department shall follow the procedures outlined in section 734(i)(1) of the Act.

(I) Definitions

For purposes of the Agreement, the following definitions apply:

(1) ''U.S. price'' means the EP or constructed export price (''CEP'') at which merchandise is sold by the producer or exporter to the first unaffiliated person in the United States, including the amount of any discounts, rebates, price protection or ship and debit adjustments, and other adjustments affecting the net amount paid or to be paid by the unaffiliated purchaser, as determined by the Department under section 772 of the Act.

(2) ''Normal value'' means the constructed value (''CV'') of the merchandise, as determined by the Department under section 773 of the Act and the corresponding sections of the Department's regulations, and as adjusted in accordance with Appendix B to this Agreement.

(3) ''Producer/Exporter'' means (1) the foreign manufacturer or producer, (2) the foreign producer or reseller which also exports, and (3) the affiliated person by whom or for whose account the merchandise is imported into the United States, as defined in section 771(28) of the Act.

(4) ''Date of sale'' means the date of the invoice as recorded in the exporter's or producer's records kept in the ordinary course of business, unless the Department determines that a different date better reflects the date on which the exporter or producer establishes the material terms of sale, as determined by the Department under its regulations.

The effective date of this Agreement is November 1, 2008.

For the Ukrainian Producers/Exporters:

Walter J. Spak,
for OJSC Alchevsk Iron and Steel Works.
Date: September 29, 2008.

Martin J. Lewin,
for Azovstal Iron & Steel Works.
Date: September 29, 2008.

Martin J. Lewin,
for Ilyich Iron & Steel Works.
Date: September 29, 2008.

For the U.S. Department of Commerce:

David M. Spooner,
Assistant Secretary for Import Administration.
Date: September 29, 2008.

Appendix A—Product Coverage

For purposes of this Agreement, the products covered are hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in the Agreement are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this agreement is dispositive. Specifically, excluded from the subject merchandise within the scope of this Agreement is grade X–70 plate.

Appendix B—Principles of Cost

General Framework

The cost information reported to the Department that will form the basis of the NV calculations for purposes of the Agreement must be: [3]

- Comprehensive in nature and based on a reliable accounting system (*i.e.*, a system based on well-established standards that can be tied to the audited financial statements);
- Calculated on a semiannual weighted-average basis of the plants or cost centers manufacturing the product;
- Based on fully-absorbed costs of production, including any downtime;
- Valued in accordance with generally accepted accounting principles; and
- Reflective of appropriately allocated common costs so that the costs necessary for the manufacturing of the product are not absorbed by other products.

Additionally, a single figure should be reported for each cost component making up the cost of production.

Cost of Manufacturing (''COM'')

COM is reported by major cost category and for major stages of production. Weighted-average costs are used for a product that is produced at more than one facility, based on the product's cost at each facility and relative production quantities.

Direct materials costs include the acquisition costs of all materials that are identified as part of the finished product and may be traced to the finished product in an economically feasible way. In contrast to indirect materials, direct materials are applied and assigned directly to a finished product. Direct materials costs should include transportation charges, import duties, and other expenses normally associated with obtaining the materials that become an integral part of the finished product.

Direct labor costs are the labor costs identified with a specific product. These costs are not allocated among products except when two or more products are produced at the same cost center. Direct labor costs should include salary, bonus and overtime pay, training expenses, and all fringe benefits. Any contracted-labor expense should reflect the actual billed cost.

Variable manufacturing overhead costs include those production costs, other than direct materials or direct labor, that generally vary in total with changes in the volume of merchandise produced at a given level of operations. Variable manufacturing overhead costs may include indirect materials (*e.g.*, supplies used in the manufacturing process), indirect labor (*e.g.* supervisory labor paid on an hourly basis), utilities (*e.g.*, energy), and other variable overhead costs. Because variable overhead costs are typically incurred for an entire production line or factory, the costs must be allocated to the products produced using a reasonable basis.

Fixed manufacturing overhead costs include those production costs that generally do not vary in total with changes in the volume of merchandise produced at a given level of operations. Fixed manufacturing overhead costs may include the costs incurred for building or equipment rental, depreciation, supervisory labor paid on a salary basis, plant property taxes, and factory administrative costs. In addition, fixed manufacturing overhead costs include research and development (''R&D'') costs that relate specifically to the subject merchandise.

Cost of Production (''COP'')

COP is equal to the sum of direct materials, direct labor, variable manufacturing overhead, and fixed manufacturing overhead (*i.e.* COM) plus SG&A expenses in the home market (''HM'').

SG&A expenses are those expenses incurred for the operation of the corporation as a whole and not directly related to the manufacture of a particular product. They include corporate general and administrative expenses, financing expenses, and general research and development expenses. Additionally, direct and indirect selling expenses incurred in the HM for sales of the product under investigation are included. Such expenses are allocated to COM using a ratio of SG&A costs.

Constructed Value

CV is equal to the sum of materials, labor and overhead (COM) and SG&A expenses plus profit in the comparison market and the cost of packing for exportation to the United States.

Calculation of Suspension Agreement Normal Values

NVs (for purposes of the Agreement) are calculated by adjusting the CV and are provided for both EP and CEP transactions. In effect, any expenses uniquely associated with the covered products sold in the HM are subtracted from the CV, and any such

[3] *See* footnote 1 in Section C(2) of the Agreement.

expenses that are uniquely associated with the covered products sold in the United States are added to the CV to calculate the NV.

''Export Price''—Generally, a U.S. sale is classified as an EP sale when the first sale to an unaffiliated person occurs before the goods are imported into the United States. In cases where the foreign manufacturer knows or has reason to believe that the merchandise is ultimately destined for the United States, the manufacturer's sale is the sale subject to review. If, on the other hand, the manufacturer sold the merchandise to a foreign trader without knowledge of the trader's intention to export the merchandise to the United States, then the trader's first sale to an unaffiliated person is the sale subject to review. For EP NVs, the CV is adjusted for movement costs and differences in direct selling expenses such as, commissions, credit, warranties, technical services, advertising, and sales promotion.

''Constructed Export Price''—Generally, a U.S. sale is classified as a CEP sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to an unaffiliated person is made by a person in the United States affiliated with the foreign exporter, CEP applies even if the sale occurs prior to importation, unless the U.S. affiliate performs only clerical functions in connection with the sale. For CEP NVs, the CV is adjusted similar to EP sales, with differences for adjustment to U.S. and HM indirect selling expenses.

Home market direct selling expenses are expenses that are incurred as a direct result of a sale. These include such expenses as commissions, advertising, discounts and rebates, credit, warranty expenses, freight costs, etc. Certain direct-selling expenses are treated individually. They include:

• Commission expenses, *i.e.*, payments to unaffiliated parties for sales in the HM.

• Credit expenses, *i.e.*, expenses incurred for the extension of credit to HM customers.

• Movement expenses, *e.g.*, foreign inland freight and insurance expenses, warehousing, and foreign brokerage, handling and port charges.

U.S. direct selling expenses are the same as HM direct selling expenses except that they are incurred for sales in the United States. Movement expenses are additional expenses associated with importation into the United States, which typically include: U.S. inland freight and insurance expenses; U.S. brokerage, handling and port charges; U.S. Customs duties, U.S. warehousing; and international freight and insurance.

U.S. indirect selling expenses include general fixed expenses incurred by the U.S. sales subsidiary or affiliated exporter for sales to the United States and may also include a portion of indirect expenses incurred in the HM for export sales, if those expenses are associated with commercial activity that takes place in the United States.

The EP and CEP NVs are calculated as follows:

For EP transactions	
+	Direct Materials.
+	Direct Labor.
+	Factory Overhead.
=	Cost of Manufacturing (COM).
+	Home Market SG&A.
=	Cost of Production (COP).
+	U.S. Packing.
+	Profit.
=	Constructed Value.
+	U.S. Direct-Selling Expense.
+	U.S. Commission Expense.
+	U.S. Movement Expense.
+	U.S. Credit Expense.
−	HM Direct-Selling Expense.
−	HM Commission Expense.[1]
−	HM Credit Expense.
=	NV for EP Sales.

[1] If the company does not have HM commissions, HM indirect expenses are subtracted only up to the amount of the U.S. Commissions.

For CEP transactions	
+	Direct Materials.
+	Direct Labor.
+	Factory Overhead.
=	Cost of Manufacturing (COM).
+	Home Market SG&A.
=	Cost of Production (COP).
+	U.S. Packing.
+	Profit.
=	Constructed Value.
+	U.S. Direct-Selling Expense.
+	U.S. Indirect-Selling Expense.
+	U.S. Commission Expense.
+	U.S. Movement Expense.
+	U.S. Credit Expense.
+	U.S. Further Manufacturing Expenses (if any).
+	CEP Profit.
−	HM Direct-Selling Expense.
−	HM Commission Expense.[1]
−	HM Credit Expense.
=	NV for CEP Sales.

[1] If the company does not have HM commissions, HM indirect expenses are subtracted only up to the amount of the U.S. Commissions.

[FR Doc. E8–23393 Filed 10–2–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice and Call for Applications for Trade Mission to Warsaw, Poland in Conjunction With Trade Winds Forum Europe, April 19–22, 2009

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice and Call for Applications for the Trade Mission to Warsaw, Poland in conjunction with Trade Winds Forum Europe, April 19–22, 2009.

I. Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is organizing a trade mission to Warsaw, Poland, April 22, 2009, in conjunction with the Trade Winds Europe Business Development Forum in Warsaw, Poland, April 19–21, 2009.

The 2009 Trade Winds Forum Europe will include general conference sessions on pan-European business issues and pre-arranged consultations with Senior Commercial Officers from U.S. Embassies throughout Europe. The Trade Mission to Poland will add another dimension to the event by providing clients with the opportunity to conduct business to business meeting with firms in Poland. It will be open to U.S. companies from a cross section of industries with growing potential in Poland, including, but not limited to, best prospects such as energy (mining, oil and gas, electric power generation, renewable), defense and aerospace, telecommunications and information technology, environmental technologies, medical equipment, safety and security equipment, automotive parts and service equipment, and logistics and transportation.

The combination of the Trade Winds Forum Europe conference and the multi-sector trade mission in Poland will provide participants with substantive knowledge and strategies for entering or expanding their business in the European market and Poland specifically.

II. Commercial Setting

Europe: Together, the United States and Europe account for more than 40 percent of the global economy and transact more than $1.5 trillion per year in trade and investment. Europe is often among the first export markets for U.S. companies. When businesses look to Europe, they are looking to opportunities unparalleled in any other region. Europe is much broader than the 27-member European Union (EU), and opportunities are abundant. For example, the European Economic Area and the European Free Trade Association (EFTA) countries have harmonized many of their regulations with the European Union. The EFTA countries (Norway, Iceland, Liechtenstein and Switzerland), though small in population, are among the wealthiest in the world on a per capita basis.

The introduction in many EU member states of a common currency, the euro, and mutual recognition of standards has

made the European market both more competitive and more open. While the European market for U.S. goods and services is truly a single market for some items, it is still fragmented along country, language, cultural, or regional lines for others. With the ongoing consolidation of distribution channels and retailers, marketing for many goods can now be done with a pan-European perspective. However, for other items—particularly specialty products—the retail outlets, distributors and end-users are still local, and the best coverage for such markets will likely be on a regional basis that might even divide Europe's larger countries into more than one market.

Poland constitutes a market of 38 million people located in the heart of central Europe. It has become a fully integrated member of the EU since its May 2004 accession, adhering to common economic, structural and commercial policies, including adoption of the common external tariff regime. The United States and Poland enjoy an extraordinarily close relationship that has fostered strategic and commercial cooperation. There are abundant opportunities for U.S. firms in Poland, given the country's rapid economic growth, the size and location of the market, the access it affords to the larger EU market, and the strong affinity Poles have for the United States.

Poland's economy grew at a rate in excess of 6.5% in 2007 and is projected to grow by at least 5% in 2008. It has enjoyed 17 straight years of economic expansion, fueled by high export output, individual consumption, and increased business investment, including new foreign direct investment totaling approximately $15 billion in 2007. The United States claims roughly 3% of Poland's import market. Trade volume is expected to continue increasing due to the depreciated U.S. dollar, increased domestic demand, and overall affinity for U.S. products. Excellent opportunities exist for U.S. exporters in a range of sectors, particularly in the above-cited best prospects areas.

III. Mission Goals

The goal of the mission is to help the U.S. companies find potential partners, agents, distributors, and joint venture partners in the Polish market, laying the foundation for successful long-term ventures. The delegation will have access to Senior Commercial Officers during the mission, learn about the expansive business opportunities in Poland, and gain first-hand market exposure. U.S. delegation members already doing buisness in Poland will have opportunities to further advance business relationships and transactions in that market.

IV. Mission Scenario

The mission will include pre-screened, individual appointments with potential business partners; industry/country market briefings; logistical support; networking opportunities with leading industry and government officials; and full conference registration for the Trade Winds Forum Europe, April 19–21, 2009, including conference materials and admission to all conference sessions and networking events.

U.S. delegation members will arrive in Warsaw on or before April 19, 2009, to attend the opening ceremony of the Trade Winds Forum Europe. The final day of the Forum, April 21, 2009, will be devoted to market briefings and consultations with Europe-based Senior Commercial Officers. On April 22, 2009, mission participants will take part in the business-to-business meetings with Polish firms, and the mission will conclude with a networking reception hosted by the Senior Commercial Officer based in the U.S. Embassy in Poland.

V. Mission Timetable

April 19, 2009 Arrive Warsaw, Trade Winds Forum Europe registration Welcome reception.

April 20, 2009 Trade Winds Forum Europe—Conference sessions.

April 21, 2009 Trade Winds Forum Europe, Briefings and Consultations with Senior Commercial Officers Forum concludes.

April 22, 2009 Trade Mission takes place, featuring one-on-one business appointments with pre-screened, private-sector Polish companies.

VI. Participation Requirements

All parties interested in participating in the Commercial Service Trade Mission to Poland must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A maximum of 50 companies will be selected to participate in the mission from the applicant pool. U.S. companies already doing business with Poland as well as U.S. companies seeking to enter Poland for the first time may apply.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $1,650 for a small or medium-sized enterprise (SME) [*] and $2,850 for large firms. This fee includes the Trade Winds Forum Europe conference registration fee of $650. The fee for each additional firm representative (large firm or SME) participating in the mission is $650. Expenses for travel, lodging, most meals, and incidentals will be the responsibility of each mission participant.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Selection Criteria for Participation: Selection will be based on the following criteria:

- Relevance of a company's business line to mission goals.
- Company's potential for business in Poland.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

VII. Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission

[*] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

calendar—*http://www.ita.doc.gov/doctm/tmcal.html*—and other Internet web sites, press releases to the general and trade media, direct mail and broadcast fax, notices by industry trade associations and other multiplier groups, and announcements at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin September 1, 2008, and conclude no later than January 30, 2009. The mission will open on a first come first served basis. Applications received after January 30, 2009, will be considered only if space and scheduling constraints permit.

U.S. Contact Information: Bill Burwell, Director, Mid-Atlantic Network, U.S. Department of Commerce, U.S. Export Assistance Center—Baltimore, *Bill.Burwell@mail.doc.gov*, Tel: 410–962–3097—Cell: 443–271–8796, Fax: 410–962–4529.

Debora Sykes, ITS, Mid-Atlantic Network, U.S. Department of Commerce, U.S. Export Assistant Center—Trenton, *Debora.Sykes@mail.doc.gov*, Tel: 856–722–1032—Cell: 609–571–7525, Fax: 856–722–0716.

Poland Contact Information: John McCaslin, Commercial Counselor, U.S. Commercial Service, U.S. Embassy—Warsaw, Poland, Tel: 48–22–625–4374, Fax: 48–22–621–6327, *John.McCaslin@mail.doc.gov.*

Dated: September 29, 2008.

Bill Burwell,

Director, Mid-Atlantic Network, U.S. Department of Commerce, U.S. Export Assistance Center—Baltimore, U.S. Department of Commerce.

[FR Doc. E8–23412 Filed 10–2–08; 8:45 am]

BILLING CODE 3510–DS–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 16 October 2008, at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov*. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address, or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 25 September, 2008.

Thomas Luebke,

Secretary.

[FR Doc. E8–23229 Filed 10–2–08; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Reserve Forces Policy Board (RFPB) Advisory Committee Meeting

AGENCY: Department of Defense; Office of the Secretary of Defense Reserve Forces Policy Board.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting of the Reserve Forces Policy Board (RFPB).

DATES: October 28, 2008 (8:30 a.m.–4 p.m.) and October 29, 2008 (8:30 a.m.–2:30 p.m.).

ADDRESSES: Meeting address is (10/28/08) Fort Myer Officer's Club, Arlington, VA 22211; (10/29/08) Pentagon, Conference Room TBA, Arlington, VA.

Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300.

FOR FURTHER INFORMATION CONTACT: Col Marjorie Davis, Designated Federal Officer, (703) 697–4486 (Voice), (703) 614–0504 (Facsimile), *marjorie.davis@osd.mil*.

Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: An open meeting of the Reserve Forces Policy Board.

Agenda: Discussion of homeland security and other issues relevant to the Reserve Components.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space this meeting is open to the public. To request a seat, contact the Designated Federal Officer not later than 10/3/08 at 703–697–4486, or by e-mail, *marjorie.davis@osd.mil* and/or *donald.ahern@osd.mil*.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Reserve Forces Policy Board at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Reserve Forces Policy Board's Designated Federal Officer. The Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

Written statements that do not pertain to a scheduled meeting of the Reserve Forces Policy Board may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: September 25, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–23311 Filed 10–2–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Nuclear Command and Control System Comprehensive Review Advisory Committee

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense published a notice on September 11, 2008 (73 FR 52835) announcing a closed meeting of the U.S. Nuclear Command and Control System Comprehensive Review Advisory Committee. This notice is being published to announce changes in the meeting time, place, and agenda.

DATES: October 7, 2008 (0800–1630) and October 8, 2008 (0800–1645)

ADDRESSES: Nuclear Command and Control System Support Staff, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Jones, (703) 681–8681, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041.

SUPPLEMENTARY INFORMATION:

Agenda

Oct 7 2008 NSS

Time	Topic	Presenter(s)
8:30 a.m.	Welcome & Administrative Remarks	CAPT Budney, USN.
8:45 a.m.	Current Stockpile Status (Size, Funding)	Greenaugh.
9:15 a.m.	ROSA	Kusnezov.
9:45 a.m.	Advanced Certification	Deeney.
10:15 a.m.	Break	
10:30 a.m.	Testing and Simulation	Kusnezov.
12:00 p.m.	Lunch	
1:00 p.m.	Nuclear Weapons Complex—Capabilities	Allen.
1:30 p.m.	Nuclear Weapons Complex—Transformation	Allen.
2:00 p.m.	Nuclear Expertise	TBD.
2:15 p.m.	Break	
2:30 p.m.	Nuclear Stockpile Management Surveillance/WARTS	Neeley.
3:00 p.m.	Modernization (RRW vs LEP)	Greenaugh.
3:30 p.m.	Throughput Initiatives	Greenaugh.
4:00 p.m.	Executive Session	
4:30 p.m.	Adjourn	

Oct 8 2008 NSS

Time	Topic	Presenter(s)
8:30 a.m.	Nuclear Explosive Safety, ENDS, SS–21, ESD	Greenaugh.
9:00 a.m.	Security	NA–70.
9:30 a.m.	Use Control, PAL, UCEC National Laboratory Perspective	Greenaugh.
10:00 a.m.	Lawrence Livermore National Laboratory	LLNL.
10:30 a.m.	Break	
10:45 a.m.	Los Alamos National Laboratory	LANL.
11:15 a.m.	Sandia National Laboratory	SNL.
11:45 a.m.	Lunch	
1:00 p.m.	Accident/Incident/Emergency Response	NA–40.
1:45 p.m.	NSPD–28 Implementation Status	NA–40.
1:00 p.m.	POG Process	SSP.
1:30 p.m.	POG Process	AF AF/NWC.
2:15 p.m.	Break	
2:30 p.m.	DoD Nuclear Weapon Surety Unauthorized Launch Analysis (ULA) Unauthorized Use Analysis (UUA)	SSP & AFSC.
3:30 p.m.	Schlesinger Task Force Report	TBD.
4:15 p.m.	Executive Session	
4:45 p.m.	Adjourn	

Dated: September 25, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–23309 Filed 10–2–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0071]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 3, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 26, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0165–1b DACH

SYSTEM NAME:

Chaplain Privileged Counseling/ Interview Communication Cases (July 25, 2008, 73 FR 43418).

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''The Chief of Chaplains, 2511 Jefferson Davis Highway, Suite 12500, Arlington, VA 22202–3907.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine

whether information about themselves is contained in this system should address written inquiries to The Chief of Chaplains, 2511 Jefferson Davis Highway, Suite 12500, Arlington, VA 22202–3907 or the Chaplain at the Army installation where counseling or interview occurred.

Individual should provide their full name, present address and telephone number, and signature.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to The Chief of Chaplains, 2511 Jefferson Davis Highway, Suite 12500, Arlington, VA 22202–3907 or the Chaplain at the Army installation where counseling or interview occurred.

Individual should provide their full name, present address and telephone number, and signature.''

* * * * *

A0165–1b DACH

SYSTEM NAME:

Chaplain Privileged Counseling/ Interview Communication Cases

SYSTEM LOCATION:

Army installations. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army members, their dependents and other individuals who have received pastoral counseling from Army chaplains.

CATEGORIES OF RECORDS IN THE SYSTEM:

Memoranda and/or documents resulting from counseling or interview sessions between a chaplain and an individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3013, Secretary of the Army; 5 U.S.C. 301, Departmental Regulations; Army Regulation 165–1, Chaplain Activities in the United States Army and E.O. 9397 (SSN).

PURPOSE(S):

To document privileged counseling/ interview sessions between Army chaplains and individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked file cabinets and electronic storage media.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is stored in locked cabinets or desks, and is accessible only to the chaplain maintaining the record.

RETENTION AND DISPOSAL:

Retained for 2 years after the individual case is closed; then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

The Chief of Chaplains, 2511 Jefferson Davis Highway, Suite 12500, Arlington, VA 22202–3907.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to The Chief of Chaplains, 2511 Jefferson Davis Highway, Suite 12500, Arlington, VA 22202–3907 or the Chaplain at the Army installation where counseling or interview occurred.

Individual should provide their full name, present address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to The Chief of Chaplains, 2511 Jefferson Davis Highway, Suite 12500, Arlington, VA 22202–3907 or the Chaplain at the Army installation where counseling or interview occurred.

Individual should provide their full name, present address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–23291 Filed 10–2–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2208–0070]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Army is proposing to amend a system of records in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on November 3, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 25, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

DHA 03

SYSTEM NAME:

Pentagon Employee Referral Service (PERS) Counseling Records (February 22, 1993, 58 FR 10227).

CHANGES:

Change system ID to ''A0040–66c DASG''.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Pentagon Employee Referral Service, DiLorenzo TRICARE Health Clinic, Room 224, 5803 Army Pentagon, Washington, DC 20310–5803.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 5 U.S.C. Part 792, Federal Employees' Health and Counseling Programs; E.O. 12564, 1986 Drug-Free Workplace; Army Regulation 40–66, Medical Record Administration and Health Care Documentation; and E.O. 9397 (SSN).''

* * * * *

Add two NOTES under Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

''**Note:** Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in filing cabinets and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Patient's last name, Social Security Number (SSN) and Client Case Number.''

SAFEGUARDS:

Delete entry and replace with ''Paper records are maintained in file cabinets that are locked when the office is not occupied by authorized personnel. The automated database files are on a password-protected, stand alone computer. All patient records are maintained and used with the highest regard for patient privacy. Only persons on a need-to-know basis and trained in the handling of information protected by the Privacy Act have access to the system.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Paper records are destroyed five years after termination of counseling. Destruction is by shredding, pulping, macerating, or burning.

Electronic records are purged of identifying data seven years after termination of counseling.

Aggregate data without personal identifiers is maintained for management/statistical purposes until no longer required.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director, Pentagon Employee Referral Service, DiLorenzo TRICARE Health Clinic, Rm. 230, 5803 Army Pentagon, Washington, DC 20310–5803.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Pentagon Employee Referral Service, DiLorenzo TRICARE HEALTH Clinic, 5803 Army Pentagon, Washington, DC 20310–5803.

The request should contain the full name, address, Social Security Number (SSN) and the signature of the subject individual.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Pentagon Employee Referral Service, DiLorenzo TRICARE Health Clinic, Rm. 230, 5803 Army Pentagon, Washington, DC 20310–5803.

The request should contain the full name, address, Social Security Number (SSN) and the notarized signature of the subject individual.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.''

* * * * *

A0040–66c DASG

SYSTEM NAME:

Pentagon Employee Referral Service (PERS) Counseling Records.

SYSTEM LOCATION:

Pentagon Employee Referral Service, DiLorenzo TRICARE Health Clinic, Room 224, 5803 Army Pentagon, Washington, DC 20310–5803.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian DoD employees assigned to duty in the Pentagon and environ who are referred by management for, or voluntarily request, counseling assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on patients which are generated in the course of professional counseling. Records of information on condition, current status, progress and prognosis for patients who have personal, emotional, alcohol or drug dependency problems, including admitted or urinalysis-detected illegal drug abuse.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 5 U.S.C. Part 792, Federal Employees' Health and Counseling Programs; E.O. 12564, 1986 Drug-Free Workplace; Army Regulation 40–66, Medical Record Administration and Health Care Documentation; and E.O. 9397 (SSN).

PURPOSE(S):

To record counselor's observations concerning patient's condition, current status, progress prognosis and other relevant treatment information regarding patients in an employee assistance treatment facility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

RECORDS IN THIS SYSTEM MAY NOT BE DISCLOSED WITHOUT THE PRIOR WRITTEN CONSENT OF SUCH PATIENT, UNLESS THE DISCLOSURE WOULD BE:

To medical personnel to the extent necessary to meet a bona fide medical emergency;

To qualified personnel for the purpose of conducting scientific

research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner; and

If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore.

Note: Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in filing cabinets and electronic storage media.

RETRIEVABILITY:

Patient's last name, Social Security Number (SSN) and Client Case Number.

SAFEGUARDS:

Paper records are maintained in file cabinets that are locked when the office is not occupied by authorized personnel. The automated database files are on a password-protected, stand alone computer. All patient records are maintained and used with the highest regard for patient privacy. Only persons on a need-to-know basis and trained in the handling of information protected by the Privacy Act have access to the system.

RETENTION AND DISPOSAL:

Paper records are destroyed five years after termination of counseling. Destruction is by shredding, pulping, macerating, or burning.

Electronic records are purged of identifying data seven years after termination of counseling.

Aggregate data without personal identifiers is maintained for management/statistical purposes until no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pentagon Employee Referral Service, DiLorenzo TRICARE Health Clinic, Rm. 230, 5803 Army Pentagon, Washington, DC 20310–5803.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Pentagon Employee Referral Service, DiLorenzo TRICARE HEALTH Clinic, 5803 Army Pentagon, Washington, DC 20310–5803.

The request should contain the full name, address, Social Security Number (SSN) and the signature of the subject individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Pentagon Employee Referral Service, DiLorenzo TRICARE Health Clinic, Rm. 230, 5803 Army Pentagon, Washington, DC 20310–5803.

The request should contain the full name, address, Social Security Number (SSN) and the notarized signature of the subject individual.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Patient, counselors, supervisors, co-workers or other agency or contractor-employee personnel; private individuals to include family members of patient and outside practitioners.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–23292 Filed 10–2–08; 8:45 am]

BILLING CODE 5001–06–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 December 2, 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: September 30, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title: Request for Title IV Reimbursement or Heightened Cash Monitoring 2 (HCM2).

Frequency: Monthly; Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 3,180.

Burden Hours: 12,720.

Abstract: Participating Title IV (TIV) institutions must request, maintain, disburse and manage TIV funds promoting sound cash management. An institution seeks reimbursement by submitting a request for funds via the Standard 270 form and identifying students, amounts requested and providing documentation. The amount requested is compared with what is in the Common Origination and Disbursement (COD) system. The certifying official at the institution certifies statements on the President/Owner/CEO and the Financial Aid Director/TPS forms. The forms are signed by the institution official and submitted when requesting payment for Reimbursement of HCM2 claims.

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 3848. 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., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or 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. E8–23356 Filed 10–2–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Advance Notice of Intent To Prepare a Programmatic Environmental Impact Statement for the Designation of Energy Corridors on Federal Lands in 39 States, Amend Relevant Agency Land Use or Equivalent Plans and Notice of Floodplain and Wetlands Involvement

AGENCY: Department of Energy (DOE), Office of Electricity Delivery and Energy Reliability (OE).

ACTION: Advance Notice of Intent.

SUMMARY: Section 368(b) of the Energy Policy Act of 2005 (the Act), Public Law 109–58 (August 8, 2005), directs the Secretaries of Agriculture, Commerce, Defense, Energy, and the Interior (Secretaries) to identify corridors (Section 368 corridors) on Federal lands in 39 States, other than the 11 contiguous Western States (Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming) (11 Western States) that might be used for oil, gas and hydrogen pipelines and electricity transmission and distribution facilities. Section 368 further requires the Secretaries to identify these Section 368 corridors by August 8, 2009, and schedule prompt action to designate and incorporate the Section 368 corridors into applicable land use or equivalent plans. The designation must specify the centerline, width and compatible uses of the Section 368 corridors.

In proposing how and where to designate Section 368 corridors, the Secretaries must take into account the need for upgraded and new electricity transmission and distribution facilities to (1) Improve reliability; (2) relieve congestion; and (3) enhance the capability of the national grid to deliver electricity. The Section 368 corridor designations would not authorize development but would serve as a planning tool to identify the preferred locations for siting potential energy transport projects in the future.

DOE, the Department of the Interior (DOI), the Department of Agriculture (USDA) and the Department of Defense (DOD) (the Agencies) intend to prepare a programmatic environmental impact statement (PEIS), entitled *Designation of Energy Corridors on Federal Land in 39 States* (DOE/EIS–0406), to identify any environmental impacts that may result from the proposed action of designating Section 368 corridors and incorporating them into applicable land use or equivalent plans. The Agencies also will identify the environmental impacts from the range of reasonable alternatives to the proposed action. DOE and DOI, through the Bureau of Land Management (BLM), intend to be co-lead agencies for this effort; USDA, through the United States Forest Service (FS), and DOD intend to participate as cooperating agencies.

DOE is issuing this Advance Notice of Intent (ANOI), pursuant to 10 CFR 1021.311(b), in order to request early comments and suggestions from Federal and State agencies, Tribal and local governments, the public, and other interested parties. Comments and suggestions will assist the Agencies in identifying the location of potential Section 368 corridors on Federal lands in 39 States, the preliminary range of reasonable alternatives, screening criteria, and the potential environmental impacts related to the Agencies' designation of Section 368 corridors on Federal land in 39 States. The early comments on the potential location of Section 368 corridors will inform DOE's decision on where to hold scoping meetings.

Because the proposed action may involve actions in a floodplain or wetland, the draft PEIS would include a floodplain and wetlands assessment, as required by 10 CFR 1022, and the final PEIS or agency records of decision would include a floodplain statement of findings. The Agencies will prepare the PEIS in accordance with the National Environmental Policy Act (NEPA); the Council on Environmental Quality's NEPA implementing regulations, 40 CFR 1500–1508; DOE's NEPA implementing regulations promulgated pursuant to NEPA, 10 CFR 1021; BLM's planning regulations, 43 CFR 1600; and applicable FS planning regulations to amend land use plans.

DATES: The public comment period for this ANOI starts with the publication of this notice in the **Federal Register** and will continue until December 2, 2008. Comments received or postmarked after that date will be considered to the extent practicable. The Agencies plan to issue a Notice of Intent (NOI) for this PEIS following analysis of comments and suggestions received on the ANOI. After the NOI is issued, the Agencies will conduct public scoping meetings to assist in further defining the scope of the PEIS and to identify significant issues to be addressed. The dates and locations of all scoping meetings will be announced in the NOI, subsequent **Federal Register** notices, and in local media.

ADDRESSES: Comments or suggestions on the scope of the PEIS and the proposed action should be sent to: Brian Mills at the U.S. Department of Energy,

Office of Electricity Delivery and Energy Reliability (OE–20), 1000 Independence Avenue, SW., Washington, DC 20585; phone 202–586–8267; facsimile at 202–586–8008; or by electronic mail at *Brian.Mills@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: To request further information about this PEIS, the public scoping meetings, or to be placed on the PEIS distribution list, use any of the methods listed under **ADDRESSES** above. For general information on the DOE NEPA process please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0103; phone 202–586–4600; leave a message at 800–472–2756; or facsimile at 202–586-7031. Further information about this effort, including maps showing Federal lands and existing infrastructure, may be found on the project Web site at *eastcorridoreis.anl.gov*.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) hereby provides advance notice that several Federal Agencies intend to prepare a Programmatic Environmental Impact Statement (PEIS) to analyze the environmental impacts from the proposed action and the range of reasonable alternatives for implementing Section 368 of the Energy Policy Act of 2005, entitled *Energy Right-of-Way Corridors on Federal Land*. The Agencies intend to prepare this PEIS pursuant to NEPA, the CEQ's NEPA implementing regulations, 40 CFR 1500–1508; DOE's NEPA implementing regulations promulgated pursuant to NEPA, 10 CFR 1021; BLM's planning regulations, 43 CFR 1600; and applicable FS planning regulations to amend land use plans. DOE issues this ANOI pursuant to 10 CFR 1021.311(b).

Background and Purpose and Need for Agency Action

As outlined below, the purpose and need for the Agency action is to implement Section 368 of EPAct 2005. Recognizing the shortcomings in the nation's energy infrastructure Congress required in Section 368(a) that the Agencies and the Department of Commerce (1) Designate, under their respective authorities, corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on Federal land* * *; (2) perform any environmental reviews that may be required to complete the designation of such corridors; and (3) incorporate the designated corridors into the relevant land use and resource management plans or equivalent plans.

Congress placed the highest priority on implementing Section 368 with respect to the 11 contiguous Western States. The Agencies issued a *Draft PEIS for the Designation of Corridors on Federal Land in the 11 Western States* (DOE/EIS–0386) on November 16, 2007, and are currently preparing a Final PEIS. The Notice of Availability for the Draft PEIS is published on November 16, 2007 (72 FR 64591).

The PEIS at issue here is for implementing Section 368 with respect to the other 39 States (39 States). Section 368(b) of the Act requires the Agencies and the Department of Commerce to identify corridors in the 39 States by August 8, 2009, and then to schedule prompt action to identify, designate, and incorporate those corridors in the applicable land use plans. Pursuant to Section 368(e), the designation must specify the corridor's centerline, width and compatible uses.

Further, Section 368(c)(2) requires ''The Secretaries, in consultation with the Federal Energy Regulatory Commission, affected utility industries, and other interested parties, shall establish procedures under their respective authorities that * * * (2) expedite applications to construct or modify oil, gas and hydrogen pipelines and electricity transmission and distribution facilities within such corridors, taking into account prior analyses and environmental reviews undertaken during the designation of such corridors.''

Section 368(d) of the Act provides the Agencies with an outline of the goals of the Section 368 energy corridors: ''* * * in carrying out this section, the Secretaries shall take into account the need for upgraded and new electricity transmission and distribution facilities to—(1) Improve reliability; (2) relieve congestion; and (3) enhance the capability of the national grid to deliver electricity.''

It is important to note that the designated Section 368 corridors would not themselves authorize development. Rather, designating the Section 368 corridors and amending relevant land use plans would constitute an administrative action that simply identifies the Agencies' preferred location for future development of energy transport projects. The Agencies also intend to improve coordination among the Agencies and to develop Interagency Operating Procedures (IOPs) to increase their efficiency in reviewing applications for projects within the Section 368 corridors.

Within the 39 States addressed by the proposed action, the Federal government owns 21.2% of the total land area with the FS, DOD, U.S. Fish and Wildlife Service, and National Park Service being the principal land stewards. Federal land comprises a small percentage of the 39 States in comparison with the high percentage of Federal land in the 11 Western States. Only 4.8% of the total land area within the 37 contiguous States and 8.9% of Hawaii is Federal land whereas about 50% of the 11 Western states are Federal lands. Alaska, whose land area is 58.1% Federal, is the one notable exception.

As opposed to the 11 Western States, where development on Federal land is clearly necessary to improve energy delivery to population centers, it is unclear that Section 368 corridors in all 39 States, particularly those with relatively few acres of Federal land, would improve energy delivery significantly enough to warrant their designation. The Agencies hope to receive comments from the general public, Tribes, States, and industry, during the NEPA process, to help identify not only environmental considerations relevant to designating Section 368 corridors but also where designated Section 368 corridors would serve the broad goal of improving energy delivery.

The Agencies are providing detailed information concerning Federal lands in the 39 States at the project's Web site: *eastcorridoreis.anl.gov*. This information includes location maps, existing infrastructure on Federal lands, acreage tabulations and links to additional sites such as the United States Geological Survey National Atlas that contain printable State maps showing Federal lands. Comments on this ANOI, particularly those that help identify potential locations for Section 368 corridors, will inform the Agencies' decision on where to hold public scoping meetings after issuing a Notice of Intent to prepare the PEIS.

Proposed Action and Alternatives

The Proposed Action in this PEIS is to identify and designate Section 368 corridors and incorporate them into the applicable land use or equivalent plans on Federal lands within 39 States for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities. These designated Section 368 corridors would be the preferred location for future energy right-of-way (ROW) project development. It should be noted that Section 368 applies only to Federal lands.

At the outset, it is important to understand the distinction between a

linear infrastructure ROW and the Section 368 corridors. An ROW is a land use authorization to allow construction and operation of a specific energy transport project on identified Federal lands. In contrast, a Section 368 corridor would not authorize any energy transport projects. It would identify Federal lands where the construction, operation or upgrade of one or more energy transport projects is preferred. As guided by the Federal Land Policy and Management Act of 1976 (FLPMA), Section 368 corridors would assist in minimizing adverse impacts and the proliferation of separate ROWs (which could be consolidated into a single Section 368 corridor). The Section 368 corridors would constitute a planning tool.

The Proposed Action would not authorize project activities. When a specific project such as construction of a new pipeline or electric transmission line or retrofitting utilities within a Section 368 corridor is proposed, the proponent would apply for an ROW and the project would be subject to site-specific NEPA analysis, which would include public comment. The Agencies believe that the PEIS will supply information that the Agencies can reference, as appropriate, in the event that they prepare site-specific NEPA documents to support a request for an ROW.

The Draft PEIS will analyze at least three alternatives, including: (1) A No Action Alternative; (2) designation of existing ROWs as Section 368 corridors (Existing ROW Alternative); (3) designation of existing ROWs and routes where there are no ROWs as Section 368 corridors (New Corridors Alternative). The information received as a result of this notice and future public scoping may result in additional alternatives being evaluated.

No Action Alternative

Under the No Action Alternative, Section 368 corridors would not be designated on Federal lands in any of the 39 States; the siting and development of energy transport projects would continue under current agency procedures for granting ROWs; and energy transport project applicants would have to satisfy the often disparate application requirements of multiple agencies for the same project. There would be relatively little coordination for siting and permitting these projects to meet current and future energy needs in the 39 States.

The parts of the PEIS that discuss the No Action Alternative would identify the environmental impacts associated with each of the Agencies continuing to issue ROWs pursuant to their present practices. These practices would include the application of local planning criteria by each Federal land management office. Local planning criteria may not include the specificity required by Section 368 to, at a minimum, specify the centerline, width, and compatible uses of a corridor.

Existing ROW Alternative

Under this alternative, the Agencies would review existing ROWs and, if suitable, designate these ROWs as Section 368 corridors and incorporate those Section 368 corridors through amendment into relevant land use and resource management plans. These Section 368 corridors would constitute preferred locations for future ROWs for projects on Federal lands. The PEIS would identify the environmental impacts, if any, associated with each of the Agencies designating the Section 368 corridors and amending relevant land use and resource management plans.

New Corridors Alternative

Under the New Corridors Alternative, the Agencies would designate as Section 368 corridors the existing ROWs together with newly designated Section 368 corridors. These Section 368 corridors would comprise preferred locations for future ROWs on Federal lands.

Based upon the information and analyses developed in this PEIS, if an Agency decides to implement an action alternative, the Agency would issue a Record of Decision (ROD) to designate a series of Section 368 energy corridors by amending the appropriate land use plans.

Potential Section 368 Corridor Screening Criteria

The following represent screening criteria that could help identify the preferred locations of Section 368 corridors. The screening criteria would be used to identify both presumptively suitable land for future development of energy transport projects and land use considerations that potentially influence the designation of these Federal lands as Section 368 corridors.

Existing ROWs

(1) Locally designated utility corridors identified in land use plans pursuant to FLPMA; (2) Utility ROWs in current use (built before 1969); (3) ROWs in current use (built after 1969); (4) Related ROW use (e.g. transportation easement); and (5) Existing deeded easements for electrical transmission lines.

Land classifications that could restrict designation of Section 368 corridors, including those Federal lands of ecological, cultural, scientific, educational or recreational resources:

(1) Wilderness areas including study, eligible, proposed, recommended, or designated wilderness area; (2) Wild and scenic rivers; (3) National Park Service Units (designated as Parks, Monuments, Preserves/National Reserves, Historic Sites, Historical Parks, Military Parks, Memorials, Battlefields, Cemeteries, Recreation Areas, Seashores, Lakeshores, Rivers/Scenic Rivers, Parkways, Trails); (4) National wildlife refuges; (5) National Monuments; (6) Roadless areas; (7) National natural landmarks; (8) National conservation areas; (9) Areas of critical environmental concern; (10) World heritage sites; (11) Research natural areas; (12) Experimental forests; (13) Paleontological resource sites; (14) Military installations/training and testing areas; (15) DOD special use air space; (16) Citizen proposed wilderness areas; (17) National Historic Register sites; (18) Critical habitat for threatened, endangered or candidate species; (19) Citizen proposed wilderness study areas; and (20) Native American cultural resource sites.

Identification of Environmental Issues

The purpose of this ANOI is to solicit comments and suggestions for consideration in the preparation of the PEIS and to help inform the Agencies on where to hold scoping meetings following the issuance of an NOI. As background for public comment, this advance notice contains a list of potential environmental issues that the Agencies have tentatively identified for analysis. This list is not intended to be all-inclusive or to imply any predetermination of impacts, nor does it imply that there are direct, indirect or cumulative impacts from the Proposed Action. The following is a preliminary list of issues that may be analyzed in the PEIS: (1) Impacts on existing and future land uses; (2) Socioeconomic and recreational impacts of future development of ROWs and their subsequent use; (3) Impacts of future development on protected, threatened, endangered, or sensitive species of animals or plants, or their critical habitats; (4) Impacts on floodplains and wetlands; (5) Impacts on archaeological, cultural, or historic resources; (6) Impacts on human health and safety; (7) Visual impacts; and (8) Disproportionately high and adverse impacts on minority and low-income populations, also known as environmental justice considerations.

PEIS Process

Interested parties are invited to participate in the PEIS process, both to refine the preliminary alternatives and environmental issues to be analyzed in depth and to eliminate from detailed study those alternatives and environmental issues that are not reasonable or pertinent. The Agencies plan to issue a NOI by the end of 2008, which will be followed by a public scoping period. The scoping process is intended to involve all interested agencies (Federal, State, county, and local), public interest groups, Native American Tribes, businesses, and members of the public.

Draft PEIS Schedule and Availability

The Agencies plan to issue a Draft PEIS in 2009. The availability of the Draft PEIS and dates for public hearings to receive comments on it will be announced in the **Federal Register** and local media. The Agencies will consider comments on the Draft PEIS when they prepare the Final PEIS. Interested parties who do not wish to submit comments or suggestions at this time, but who would like to receive a copy of the Draft PEIS and other project materials, please contact Brian Mills as provided in the **ADDRESSES** section of this notice.

Issued in Washington, DC, on September 29, 2008.

Kevin M. Kolevar,

Assistant Secretary, Electricity Delivery and Energy Reliability, Department of Energy.

[FR Doc. E8–23475 Filed 10–2–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–476–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

September 29, 2008.

Take notice that on September 18, 2008, Transcontinental Gas Pipeline Corporation (Transco), 2800 Post Oak Boulevard, PO Box 1396, Houston, Texas 77251–1396, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's Regulations for a certificate of public convenience an necessity authorizing Transco's Mobile Bay South Expansion Project (Project), an expansion of the capacity on Transco's existing Mobile Bay Lateral located in southwest Alabama. In order to create the incremental firm transportation capacity for the Project, Transco proposes to construct a new compressor station (Station 85) and appurtenant facilities to be located at the interconnection of the Mobile Bay Lateral with Transco's mainline in Choctaw County, Alabama. Under the Project, Transco states that it will provide 253,500 dekatherms per day (Dth/day) of incremental year-round firm transportation capacity from Transco's Station 85 to delivery points on the Mobile Bay Lateral, including, an existing interconnection with Gulfstream Natural Gas System, L.L.C. in Coden, Alabama (Gulfstream). Transco proposes its Zone 4A rates under Rate Schedule FT as the initial rates for service under the Project. In addition, Transco requests that the costs of the project be granted rolled-in rate treatment, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Ingrid Germany, Staff Regulatory Analyst, Transcontinental Gas Pipe Line Corp., PO Box 1396, Houston, Texas, 77251–1396 at (713) 215–4015.

Pursuant to section 157.9 of the Commission's Rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://*

www.ferc.gov. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: October 20, 2008.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–23359 Filed 10–2–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 26, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–83–000.

Applicants: Project Orange Associates, LLC.

Description: Project Orange Associates, LLC submits its Amendment to Exempt Wholesale Generator Notice adding of additional language to Item 8 of ''Representations'' section of filing.

Filed Date: 08/19/2008.

Accession Number: 20080819–5008.

Comment Date: 5 p.m. Eastern Time on Friday, October 03, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER08–340–002.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc request that the proposed Tariff sheets become effective on or before 2/1/09, upon notice by SPP.

Filed Date: 09/23/2008.

Accession Number: 20080924–0036.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 14, 2008.

Docket Numbers: ER08–895–002.

Applicants: Consolidated Edison Co. of New York, Inc.

Description: Consolidated Edison Company of New York, Inc submits affidavit of John P. Beck as a supplement to its prior response to Inquiry 3(b) posed in the Notice of Deficiency that was issued on 6/24/08.

Filed Date: 09/25/2008.

Accession Number: 20080926–0108.

Comment Date: 5 p.m. Eastern Time on Thursday, October 16, 2008.

Docket Numbers: ER08–1549–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits revised pages to its Open Access Transmission Tariff intended to implement a rate change for Public Service Company of Oklahoma and Southwestern Electric Power Company etc.

Filed Date: 09/17/2008.

Accession Number: 20080919–0009.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 08, 2008.

Docket Numbers: ER08–1567–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits the Generation Interconnection Process Reform Tariff Amendment for its Wholesale Distribution Access Tariff.

Filed Date: 09/24/2008.

Accession Number: 20080925–0099.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 15, 2008.

Docket Numbers: ER08–1569–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits revisions to Schedule 1 of the Amended and Restated Operating Agreement as well as the parallel provisions of the Appendix to Attachment K of the PJM Open Access Transmission Tariff etc.

Filed Date: 09/25/2008.

Accession Number: 20080926–0101.

Comment Date: 5 p.m. Eastern Time on Thursday, October 16, 2008.

Docket Numbers: ER08–1570–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Engineering and Procurement Agreement dated 8/27/08 between PacifiCorp and Eurus Combine Hills II LLC to be designated as Service Agreement 507 under PacifiCorp's Seventh Revised Volume 11 OATT.

Filed Date: 09/25/2008.

Accession Number: 20080926–0109.

Comment Date: 5 p.m. Eastern Time on Thursday, October 16, 2008.

Docket Numbers: ER08–1571–000.

Applicants: Bridgeport Energy II, LLC.

Description: Bridgeport Energy II, LLC's emergency request for limited waiver of forward capacity market rules and request for expedited consideration and shortened notice period.

Filed Date: 09/25/2008.

Accession Number: 20080926–0136.

Comment Date: 5 p.m. Eastern Time on Thursday, October 09, 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. E8–23315 Filed 10–2–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL08–91–000; ER08–1057–000]

Arkansas Electric Cooperative Corporation, Mississippi Delta Energy Agency, and South Mississippi Electric Power Association, Complainant, v. Entergy Services, Inc., Respondent; Entergy Services, Inc.; Notice of Complaint

September 29, 2008.

Take notice that on September 26, 2008, Arkansas Electric Cooperative Corporation, Mississippi Delta Energy Agency and its two members, the Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi and the Public Service Commission of Yazoo City of the City of Yazoo City, Mississippi, and South Mississippi Electric Power Association (Complainant), pursuant to sections 206, 306 and 309 of the Federal Power Act, 16 U.S.C. 824e, 825e, and 825h, and Rules 206 and 212 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, 385.212, filed a formal complaint and motion for consolidation against Entergy Services, Inc. (Respondent) alleging that, the Respondent's 2008 transmission rate redetermination would impose rates that are unjust and unreasonable in violation of the Federal Power Act.

Joint Complainants certify that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 16, 2008.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–23360 Filed 10–2–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF06–2011–002]

Bonneville Power Administration; Notice of Filing

September 29, 2008.

Take notice that on September 29, 2008, Bonneville Power Administration filed a proposed 2009 supplemental wholesale power rates, WP–07 Supplemental Rates, for interim and final approval by the Federal Energy Regulatory Commission, and to become effective October 1, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 13, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–23367 Filed 10–2–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–89–000]

Kansas City Power & Light Company; Notice of Filing

September 29, 2008.

Take notice that on September 23, 2008, Kansas City Power & Light Company filed a petition for declaratory order, pursuant to Rule 207 of the Rules of Practice and Procedure of the Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 23, 2008.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–23361 Filed 10–2–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF08–3022–000]

Southeastern Power Administration; Notice of Filing

September 25, 2008.

Take notice that on September 16, 2008, the Deputy Secretary, U.S. Department of Energy, pursuant to the authority vested on the Deputy Secretary by the Department of Energy's Delegation Order Nos. 00–001.00C and 00–037.00, and by sections 301(b) and 302(a) of the Department of Energy Organization Act (Pub. L. 95091), submitted to the Federal Energy Regulatory Commission, pursuant to the authority vested by Delegation Order No. 00–37.00, for confirmation and approval on a final basis, Rate Schedules CBR–1–G, CSI–1–G, CEK–1–G, CM–1–G, CC–1–G, CC–1–H, CK–1–G, CTV–1–G, and Replacement–3, effective October 1, 2008 through September 30, 2013.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 16, 2008.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–23316 Filed 10–2–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8586–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2008 (73 FR 19833).

Draft EISs

EIS No. 20080288, ERP No. DS–NOA–E91023–00, Amendment 16 to the Fishery Management Plan for the Snapper Grouper Fishery, Additional Information to Analyze Four New Management Measures Alternatives for Gag and Vermillion Snapper, Implementation, South Atlantic Region.

Summary: While EPA has no objections to the proposed action, EPA did request clarification of the SEDAR data for the vermillion snapper. Rating LO.

EIS No. 20080303, ERP No. DS–USN–K11094–00, Developing Home Port Facilities for Three NIMITZ-Class Aircraft Carriers in Support of the U.S. Pacific Fleet, New Circumstances and Information to Supplements (the 1999 FEIS) Coronado, CA.

Summary: EPA does not object to the proposed project. Rating LO.

Final EISs

EIS No. 20080324, ERP No. F–BLM–J65331–WY, Kemmerer Field Office Planning Area, Resource Management Plan, Implementation, Lincoln, Sweetwater and Uinta Counties, WY.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20080325, ERP No. F–NRC–E06025–NC, Generic—License Renewal of Nuclear Plants (GEIS) Regarding Shearon Harris Nuclear Power Plant, Unit 1, Plant-Specific Supplement 33 to NUREG–1437, Wake County, NC.

Summary: EPA continues to have environmental concerns about radiological monitoring of plant effluents, and storage and disposition of radioactive waste.

Dated: September 30, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8–23389 Filed 10–2–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8586–2]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 09/22/2008 through 09/26/2008 Pursuant to 40 CFR 1506.9.

EIS No. 20080380, Draft EIS, AFS, CA, Tahoe National Forest Motorized Travel Management, Implementation, Sierra Nevada Mountains, Nevada, Placer, Plumas, Sierra and Yuba Counties, CA, *Comment Period Ends:* 11/26/2008, *Contact:* David Arrasmith 530–478–6220.

EIS No. 20080381, Draft EIS, IBR, CA, South Coast Conduit/Upper Reach

Reliability Project, Construction of a Second Water Pipeline for Improving Water Supply, U.S. Army COE Section 10 and 404 Permits, Santa Barbara County, CA, *Comment Period Ends:* 11/17/2008, *Contact:* Judi Tapia 559–487–5138.

EIS No. 20080382, Final EIS, AFS, NM, Surface Management of Gas Leasing and Development, Proposes to Amend the Forest Plan include Standard and Guidelines Related to Gas Leasing and Development in the Jicarilla Ranger District, Carson National Forest, Rio Arriba County, NM, *Wait Period Ends:* 11/03/2008, *Contact:* Audrey Kuykerdall 505–758–6200.

EIS No. 20080383, Draft EIS, AFS, VT, Deerfield Wind Project, Application for a Land Use Authorization to Construct and Operate a Wind Energy Facility, Special Use Authorization Permit, Towns of Searsburg and Readsboro, Manchester Ranger District, Green Mountain National Forest, Bennington County, VT, *Comment Period Ends:* 11/28/2008, *Contact:* Bob Bayer 802–362–2307 Ext 218.

EIS No. 20080384, Final Supplement, MMS, 00, Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sales: 2009–2012 Western Planning Area Sales: 210 in 2009, 215 in 2010, and 218 in 2011, and Central Planning Area Sales: 208 in 2009, 213 in 2010, 216 in 2011, and 222 in 2012, TX, LA, MS, AL and FL, *Wait Period Ends:* 11/03/2008, *Contact:* Mary Boatman 703–787–1662.

EIS No. 20080385, Draft EIS, FTA, MD, Red Line Corridor Transit Study, Alternatives Analysis, Implementation of a New East-West Transit Alignment through Baltimore, Baltimore County, MD, *Comment Period Ends:* 01/02/2009, *Contact:* Gail McFadden-Roberts 215–656–7100.

EIS No. 20080386, Draft EIS, COE, CA, San Pedro Waterfront Project, Proposed Specific Development Project and Associated Infrastructure Improvements on Approximately 400 Acres, Currently Operated by Los Angeles Harbor Department (LAHD), Located along the West Side of Los Angeles Harbor's Main Channel, from the Vincent Thomas Bridge to Cabrillo Beach, U.S. Army Section 10 and 404 and Section 103 Marine Protection, Research, and Sanctuaries Act Permits, (MPRSA) City of Los Angeles, CA, *Comment Period Ends:* 12/08/2008, *Contact:* Dr. Spencer D. MacNeil 805–585–2152.

EIS No. 20080387, Final EIS, NPS, CO, Curecanti National Recreation Area Resource Protection Study, Gunnison and Montrose Counties, CO, *Wait Period Ends:* 11/03/2008, *Contact:* Dave Roberts 970–240–5432.

EIS No. 20080388, Draft EIS, AFS, OR, BLT Project, Proposed Vegetation Management Activities, Crescent Ranger District, Deschutes National Forest, Deschutes County, OR, *Comment Period Ends:* 11/17/2008, *Contact:* Chris Mickle 541–433–3200.

EIS No. 20080389, Second Draft Supplement, AFS, ID, Southwest Idaho Ecogroup Land and Resource Management Plan, Provide Additional Information to Reanalyzes the Effects of Current and Proposed Management on Rock Mountain Bighorn Sheep Viability in the Payette National Forest 2003 FEIS, Boise National Forest, Payette National Forest and Sawtooth National Forest, Forest Plan Revision, Implementation, Several Counties, ID; Malhaur County, OR and Box Elder County, UT, *Comment Period Ends:* 01/02/2009, *Contact:* Patricia Soucek 208–634–0812.

EIS No. 20080390, Final EIS, BLM, MT, Montana Tunnels Mine Project, Proposed M-Pit Mine Expansion to Existing Mine Pit to Access and Mine Additional Ore Resources, Jefferson County, MT, *Wait Period Ends:* 11/03/2008, *Contact:* David Williams 406–533–7655.

EIS No. 20080391, Draft EIS, FHW, MN, Trunk Highway 14 (US 14) Project, Proposed Construction from Interstate 35 to Trunk Highway 56, Funding, NPDES and U.S. Army COE Section 404 Permits, Steele and Doge Counties, MN, *Comment Period Ends:* 11/17/2008, *Contact:* Cheryle Martin 651–291–6120.

EIS No. 20080392, Final EIS, BLM, NV, Cortez Hills Expansion Project, Proposes to Construct and Operate a New Facilities and Expansion of the Existing Open-Pit Gold Mining and Processing Operations, Crescent Valley, Lander and Eureka Counties, NV, *Wait Period Ends:* 11/03/2008, *Contact:* Christopher Worthington 775–635–4000.

EIS No. 20080393, Draft EIS, NRC, PA, Generic—License Renewal of Nuclear Plants, Supplement 36 to NUREG–1437, Regarding Beaver Valley Power Station, Units 1 and 2, Plant-Specific, Issuing Nuclear Power Plant Operating License for an Additional 20-Year Period, PA, *Comment Period Ends:* 12/10/2008, *Contact:* Emmanuel Sayoc 301–415–1924

EIS No. 20080394, Final EIS, BLM, NV, White Pine Energy Station Project, Construction and Operation, Coal-fired Electric Power Generating Plant, White Pine County, NV, *Wait Period Ends:* 11/03/2008, *Contact:* Jane Peterson 775–289–1800.

EIS No. 20080395, Draft EIS, AFS, 00, Sioux Ranger District Travel Management Project, To Designate the Road and Trail and Areas Suitable for Public Motorized Travel, Sioux Ranger District, Custer National Forest, Carter County of MT and Harding County of South Dakota, *Comment Period Ends:* 11/17/2008, *Contact:* Doug Epperly 404–657–6205 Ext. 225

EIS No. 20080396, Draft EIS, AFS, MT, Ashland Ranger District Travel Management Project, Proposing to Designate Routes for Public Motorized Use, Ashland Ranger District, Custer National Forest, Rosebud and Power River Counties, MT, *Comment Period Ends:* 11/17/2008, *Contact:* Doug Epperly 406–657–6205 Ext. 225.

EIS No. 20080397, Draft EIS, AFS, CO, Hermosa Landscape Grazing Analysis Project, Proposes to Continue to Authorize Livestock Grazing Cascade Reservoir, Dutch Creek, Elbert Creek, Hope Creek South Fork, and Upper Hermosa Allotments, Columbine Ranger District, San Juan National Forest, LaPlata and San Juan Counties, CO, *Comment Period Ends:* 11/17/2008, *Contact:* Cam Hooley 970–884–1414.

EIS No. 20080398, Draft EIS, NIH, MT, Rocky Mountain Laboratories (RML) Master Plan, Implementation, Hamilton, Ravalli County, MT, *Comment Period Ends:* 12/12/2008, *Contact:* Mark Radtke 301–451–6467.

EIS No. 20080399, Final Supplement, FTA, CA, Central Subway/Third Street Light Rail Phase 2, Funding, San Francisco Municipal Transportation Agency, in the City and County San Francisco, CA, *Wait Period Ends:* 11/03/2008, *Contact:* Ray Sukys 415–744–3133.

EIS No. 20080400, Final EIS, DOE, MT, MATL 230–kV Transmission Line Project, To Construct, Operate, Maintain, and Connects a 230–kV Electric Transmission Line, Issuance of Presidential Permit for Right-to-Way Grant, Cascade, Teton, Chouteau, Pondera, Toole and Glacier Counties, MT, *Wait Period Ends:* 11/03/2008, *Contact:* Ellen Russell 202–596–9624.

Dated: September 30, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8–23385 Filed 10–2–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8724–6]

EPA Science Advisory Board; Notification of a Public Meeting of the Science Advisory Board Environmental Economics Advisory Committee (EEAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA's Science Advisory Board (SAB) Staff Office is announcing a public meeting of the SAB Environmental Economics Advisory Committee (EEAC) to review EPA's revised *Guidelines for Preparing Economic Analyses*.

DATES: The meeting will take place from 8:30 a.m. to 5 p.m. (Eastern Time) on October 23, 2008 and from 8:30 a.m. to 12 p.m. on October 24, 2008.

ADDRESSES: The meeting will be held in the SAB Conference Center located at 1025 F Street, NW., Suite 3705, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the public meeting and call-in numbers may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board Staff Office by telephone/voice mail at (202) 343–9867, or via e-mail at *stallworth.holly@epa.gov*. The SAB mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found in the SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the SAB Environmental Economics Advisory Committee will hold a public meeting to review EPA's revised *Guidelines for Preparing Economic Analyses* posted at *http://yosemite.epa.gov/EE/epa/eerm.nsf/vwRepNumLookup/EE–0516?OpenDocument*. The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: The mission of the EEAC is to provide independent advice to the EPA Administrator, through the chartered SAB, regarding the economic analysis of EPA's decisions. EPA's National Center for Environmental Economics (NCEE) issued the *Guidelines for Preparing Economic Analyses* in September 2000 to represent Agency policy on the preparation of economic analysis called for under applicable legislative and administrative requirements. Subsequently, the EEAC provided advice on the 2000 *Guidelines for Preparing Economic Analyses* and issued an Advisory posted at *http://yosemite.epa.gov/sab/sabproduct.nsf/31C8A71147AF2AD285257193 00562630/$File/eea99020.pdf*. Over the past eight years, the literature has grown considerably and EPA has received new guidance from the Office of Management and Budget pertaining to the Agency's conduct of regulatory analysis. In response, NCEE has revised and updated the *Guidelines for Preparing Economic Analyses* and has requested the SAB's review.

Availability of Meeting Materials: Materials in support of this meeting, including an agenda and charge questions to the EEAC will be placed on the SAB Web site at *http://www.epa.gov/sab* prior to the meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider during the advisory process. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Dr. Stallworth, DFO, at the contact information noted above, to be placed on the public speaker list for the October 23–24, 2008 meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by October 16, 2008 so that the information may be made available to the SAB for their consideration prior to this teleconference. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail to *stallworth.holly@epa.gov* (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format).

Meeting Access: For information on access or services for individuals with disabilities, please contact Dr. Stallworth at (202) 343–9867 or *stallworth.holly@epa.gov*. To request accommodation of a disability, please contact Dr. Stallworth, preferably at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: September 29, 2008.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E8–23374 Filed 10–2–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8724–8]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122 (i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Chief Supply/Greenway Superfund Site, near Haskell, Wagoner County, Oklahoma.

The settlement requires the ten (10) settling parties to pay a total of $498,842.94 as payment of response costs to the Hazardous Substances Superfund plus $5,264.56 in calculated interest. The settlement includes a covenant not to sue pursuant to Section 107 of CERCLA, 42, U.S.C. 9607.

For thirty (30) days beginning the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before November 3, 2008.

ADDRESSES: The proposed settlement and additional background information

relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Kevin Shade, 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling (214) 665–2708. Comments should reference the Chief Supply/Greenway Superfund Site, near Haskell, Wagoner County, Oklahoma, and EPA Docket Number 06–11–07, and should be addressed to Kevin Shade at the address listed above.

FOR FURTHER INFORMATION CONTACT: Gloria Moran, 1445 Ross Avenue, Dallas, Texas 75202–2733 or call (214) 665–3193.

Dated: September 29, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E8–23388 Filed 10–2–08; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—no change: Employer Information Report (EEO–1).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC) announces that it intends to submit to the Office of Management and Budget (OMB) a request for an extension through January 2010.

DATE: Written comments on this notice must be submitted on or before December 2, 2008.

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

- By mail to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507.
- By facsimile (''FAX'') machine (202) 663–4114. (This is not a toll-free number). Only comments of six or fewer pages will be accepted via FAX transmittal, in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY). (These are not toll-free telephone numbers.)
- By the Federal eRulemaking Portal: *http://www.regulations.gov.* After accessing this Web site, follow its instructions for submitting comments.
- Comments need to be submitted in only one of the above formats, not all three. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information you provide. Copies of the received comments will also be available for inspection in the EEOC Library, FOIA Reading Room, by advance appointment only, from 9 a.m. to 5 p.m., Monday through Friday except legal holidays, from December 2, 2008 until the Commission publishes the 30-day notice for this item. People who schedule an appointment in EEOC Library, FOIA Reading Room, and need assistance to view the comments will be provided with appropriate aids upon request, such as readers or print magnifiers. To schedule an appointment to inspect the comments at EEOC Library, FOIA Reading Room, contact the EEOC Library by calling (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll-free telephone numbers.)

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 1801 L Street, NW., Room 9222, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TDD). This notice is also available in the following formats: large print, Braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–669–3392.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and OMB regulations 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;
2. Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

Collection Title: Employer Information Report (EEO–1).

OMB Number: OMB Number 3046–0007.

Frequency of Report: Annual.

Type of Respondent: Private industry employers with 100 or more employees and certain Federal Government contractors and first-tier subcontractors with 50 or more employees.

Description of Affected Public: Private industry employers with 100 or more employees and certain Federal Government contractors and first-tier subcontractors with 50 or more employees.

Reporting Hours: 599,000.

Respondent Cost: $11.4 million.

Federal Cost: $2.1 million.

Number of Forms: 1.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC issued regulations, Title 29, Chapter XIV, Subpart B, § 1602.7, which set forth the reporting requirements for various kinds of employers. Employers in the private sector with 100 or more employees and some Federal contractors with 50 or more employees have been required to submit EEO–1 reports annually since 1966. The individual reports are confidential. EEO–1 data are used by EEOC to investigate charges of employment discrimination against employers in private industry and to provide information about the employment status of minorities and women. The data are shared with the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, and several other Federal agencies. Pursuant to § 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–1 data are also shared with eighty-six State and local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the annual EEO–1 survey is 45,000 private employers. The estimated number of establishment-based responses per reporting company is between 3 and 4 EEO–1 reports annually. The annual number of responses is approximately 170,000. The form is estimated to impose 599,000 burden hours annually. In order to help reduce survey burden, respondents are encouraged to report data electronically whenever possible.

Dated: September 29, 2008.

For the Commission.

Reed L. Russell,

Legal Counsel.

[FR Doc. E8–23288 Filed 10–2–08; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

September 29, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 3, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, or an e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1116.

Title: Submarine Cable Reporting.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 28 respondents; 53 responses.

Estimated Time per Response: 190 hours.

Frequency of Response: On occasion, annual and one-time reporting requirement.

Obligation to Respond: Voluntary.

Total Annual Burden: 10,070 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Information provided pursuant to this request will be viewed as presumptively confidential upon submission because the information would reflect reports on weaknesses in or damage to national communications infrastructure, and the release of this sensitive information to the public could potentially facilitate terrorist targeting of critical infrastructure and key resources. The submissions also may contain internal confidential information that constitutes trade secrets and commercial/financial information that the respondent does not rountinely make public and public release of the submitted information could cause competitive harm by revealing information about the types and deployment of cable equipment and the traffic that flows across the system. See item 10 of the supporting statement submitted to OMB with this submission.

Needs and Uses: The Federal Communications Commission sought and received emergency OMB approval for this information collection on April 16, 2008. The Commission is now submitting this information collection (IC) to the OMB as a revision during this comment period to obtain the full three-year clearance from them. The Commission is reporting a –17,430 burden hour reduction (adjustment). This adjustment is due to a recalculation of a re-estimate of the average burden per respondent which was reduced from 550 hours per response to 190 hours per response.

The Commission initially contacted AT&T and Verizon, two of the largest submarine cable operators, regarding this information request. Subsequently, the Commission provided the submarine cable operators an opportunity to comment on this information collection request by having informal discussions with them and by inviting them to a meeting held at the Commission's headquarters on May 13, 2008. Based on our discussions, we believe the submarine cable operators already have much of this information, and we amended the information request to clarify that the operators would not be required to generate new information in order to comply with this request but should supply the information to the extent it is generated in the normal course of business. We, therefore, are not asking for the operator to provide information not already generated in the operation of the submarine cable systems or in possession of the operator.

Specifically, the Commission requests that the cable landing licensees provide the following information regarding the submarine cable systems: (1) System status and restoration; (2) terrestrial route map; (3) undersea location spreadsheet; and (4) restoration capability.

With this revision to the OMB, there are some differences between this information collection request and the one for which emergency approval was granted. First, it recognizes that operator-generated information covering system status and restoration data in item (1) varies widely in format, content, threshold, and volume. Some may not generate all fields of data. Further, it clarifies that operators are not required to generate new information in order to comply with this request but should supply the information to the extent that it is generated in the normal course of business. Second, it allows operators to provide a terrestrial route map as either a map or an Excel spreadsheet (approved as only a map requirement in the emergency request). Third, it clarifies that operators should

annually update information related to items (2), (3), and (4)—the terrestrial route map, the undersea location spreadsheet, and restoration capability.

While the Commission will be the collection point for this information, we will share it with the Departments and agencies that have direct responsibility for national and homeland security. This information is needed in order to support Federal government national security and emergency preparedness communications programs, for the purposes of providing situational awareness of submarine cable system performance as well as a greater understanding of potential physical threats to the submarine cable systems.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–23371 Filed 10–2–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:07 a.m. on Thursday, September 25, 2008, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Director Thomas J. Curry (Appointive), seconded by Vice Chairman Martin J. Gruenberg, concurred in by Director John M. Reich (Director, Office of Thrift Supervision), Chairman Sheila C. Bair, and Director John C. Dugan (Director, Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: September 25, 2008.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E8–23401 Filed 10–2–08; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:16 a.m. on Friday, September 26, 2008, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Martin J. Gruenberg, seconded by Mr. Scott Polakoff, acting in the place and stead of Director John M. Reich (Director, Office of Thrift Supervision), concurred in by Director Thomas J. Curry (Appointive), Julie L. Williams, acting in the place and stead of Director John C. Dugan (Comptroller of the Currency), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: September 26, 2008.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E8–23402 Filed 10–2–08; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, October 7, 2008, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(2), (c)(4), (c)(6), (c)(8), (9)(A)(ii), and (9)(B) of Title 5, United States Code, to consider matters relating to the Corporation's supervisory and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: September 30, 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–23493 Filed 10–2–08; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, October 7, 2008, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Memorandum and resolution re: Proposed FDIC Strategic Plan, 2008–2013.

Discussion Agenda: Memorandum and resolution re: Restoration Plan, Notice of Proposed Rulemaking on Risk-Based Assessments, and Designated Reserve Ratio for 2009. The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting.

Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: September 30, 2008.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E8–23494 Filed 10–2–08; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 20, 2008.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Mark Allen Conner, Canton, Georgia, to acquire additional voting shares of FirstCity Bancorp, Inc., and thereby indirectly acquire additional voting shares of FirstCity Bank, both of Stockbridge, Georgia.

2. James C. Jones, Waycross, Georgia; Patrick C. Jones and Carole C. Jones, both of Blackshear, Georgia; to retain voting shares of Jones Bancshares, LP, and thereby indirectly retain voting shares of Primesouth Bank, both of Blackshear, Georgia.

Board of Governors of the Federal Reserve System, September 30, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–23383 Filed 10–2–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 30, 2008.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. CapGen Capital Group II LLC, and CapGen Capital Group II LP, both of New York, New York, to become bank holding companies by acquiring 12.4 percent of the voting shares of PacWest Bancorp, and thereby indirectly acquire voting shares of Pacific Western Bank, both of San Diego, California.

B. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. First Community Financial Partners, Inc., Joliet, Illinois, to acquire at least 50 percent of the voting shares of First Community Bank of Homer Glen & Lockport (in organization), Homer Glen, Illinois.

Board of Governors of the Federal Reserve System, September 30, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–23382 Filed 10–2–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 082 3095]

Bioque Technologies, Inc., et al.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 17, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Bioque Technologies, File No. 082 3095,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

based form at (*http://secure.commentworks.com/ftc-BioqueTechnologies*). To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*)

FOR FURTHER INFORMATION CONTACT: Richard Cleland, FTC Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-3088.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 18, 2008), on the World Wide Web, at *http://www.ftc.gov/os/2008/09/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the ADDRESSES section above, and must be received on or before the date specified in the DATES section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Bioque Technologies, Inc., Vittorio A. Bonomo, and Christine A. Guilman (together, ''Respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves the advertising and promotion of Serum GV, a topical serum that, according to its label, contains, among other ingredients, extract of annona muricata, also known as graviola, derived from the soursop or guanabana tree. According to the FTC complaint, Respondents represented that Serum GV is an effective treatment for skin cancer, including melanoma, and that it prevents melanoma. The complaint alleges that Respondents failed to have substantiation for these claims. Also according to the FTC complaint, Respondents represented that Serum GV is recognized by the medical profession as an effective treatment for skin cancer and that it is clinically proven to prevent or treat melanoma. The complaint alleges that these claims are false and misleading because Serum GV is not recognized by the medical profession as an effective treatment for skin cancer and is not clinically proven to prevent or treat melanoma. The proposed consent order contains provisions designed to prevent Respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires Respondents to have competent and reliable scientific evidence substantiating any claims that a covered product or service is an effective treatment for skin cancer, including melanoma; prevents melanoma; is recognized by the medical profession as an effective treatment for skin cancer; or is clinically proven to prevent or treat melanoma. The provision further requires that such claims be true and non-misleading. A ''covered product or service'' is defined in the order as ''any health-related service or program; or any food, dietary supplement, device, or drug, including, but not limited to, Serum GV.''

Part II of the proposed order requires the Proposed Respondents to possess competent and reliable scientific evidence for any claims about the absolute or comparative benefits, performance, efficacy, safety, or side effects of any covered product or service. The claims also must be truthful and non-misleading.

Part III of the proposed order prohibits Respondents from making future misrepresentations about the existence, contents, validity, results, conclusions, or interpretations of any test or study.

Part IV of the proposed order provides that the order does not prohibit Respondents from making representations for any drug that are permitted in labeling for the drug under any tentative final or final Food and Drug Administration (''FDA'') standard or under any new drug application approved by the FDA and representations for any product that are specifically permitted in labeling for that product by regulations issues by the FDA under the Nutrition Labeling and Education Act of 1990.

Part V of the proposed order requires Respondents to provide the FTC with a list of all consumers that they know purchased Serum GV and prohibits Respondents from using or disclosing the consumer information, except to a law enforcement agency or as required by law.

Part VI of the proposed order requires Respondents to send to the consumers identified in Part V a notification letter drafted by the FTC to inform them about the consent agreement.

Part VII of the proposed order provides for the payment of $9,035.85, the full amount of sales of the product, to the Commission.

Parts VIII through XII of the proposed order require Respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure (for the corporate respondent) and changes in employment (for the individual respondents) that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part XIII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E8–23328 Filed 10–2–08; 8:45 am]

BILLING CODE 6750–01–S

FEDERAL TRADE COMMISSION

[File No. 082 3116]

Daryl C. Jenks, d/b/a Premium Essiac Tea 4less; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 17, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Daryl C. Jenks, File No. 082 3116,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at (*http://secure.commentworks.com/ftc-DarylCJenks*). To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*)

FOR FURTHER INFORMATION CONTACT: Richard Cleland, FTC Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-3088.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 18, 2008), on the World Wide Web, at (*http://www.ftc.gov/os/2008/09/index.htm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the ADDRESSES section above, and must be received on or before the date specified in the DATES section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Daryl C. Jenks, individually, and d/b/a Premium Essiac Tea 4less (''respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during ths period will become par of the public record. Afer thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns the advertising and promotion of a product known as Premium Essiac Tea, a powder for mag a tea beverage that, according to its label, contains. burdock root, rhubarb root, sheep sorrel, slippery elm, watercress, blessed thistle, red clover, and kelp.

The Commission's complaint charges that respondent claimed that Premium Essiac Tea was effective to treat, prevent or cure cancer and other serious diseases. The complaint alleges that respondent did not have a reasonable basis for ths claim. The complaint also charges that respondent claimed that Premium Essiac Tea was clinically proven to be superior to other types of essiac tea. The complaint alleges that ths claim was false. The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I requires respondent to have competent and reliable scientific evidence substantiating any claim that any covered product or service is effective in the treatment, cure or prevention of any disease or condition, or is superior to other similar products or services. A ''covered product or service'' is defined as any food, dietary supplement or drug, including, but not limited to any essiac tea product; or any health-related product, service or program.

Part II requires that any future claim about the absolute or comparative benefits, performance, efficacy, safety or side effects of any covered product or service be truth and supported by competent and reliable scientific evidence.

Part III of the consent order prohibits the misrepresentation of the results of any test, study or research in connection with the advertising, promotion or sale of any covered product or service.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Part IV of the proposed order provides that the order does not prohibit respondent from making representations for any drug that are permitted in labeling for the drug under any tentative or final Food and Drug Administration (''FDA'') standard or under any new drug application approved by the FDA; and representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Part V.A. of the proposed order requires respondent to provide a list of all purchasers ofPremium Essiac Tea to the Commission. Part V.B. requires respondent to mail to each purchaser a letter describing the scientific evidence related to essiac tea. Part V.C. prohibits respondent from providing any identifying information about his purchasers to anyone other than a law enforcement agency or as required by law.

Parts VI though IX of the proposed order require respondent to keep copies of relevant advertisements and materials that substantiate claims made in the advertisements; to provide copies of the order to certain of his employees; to notify the Commission of any changes in employment that might affect compliance obligations under the order; and to file compliance reports with the Commission.

Part X provides that the order will terminate afer twenty (20) years under certain circumstances.

The purpose of ths analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modif in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8–23325 Filed 10–2–08; 8:45 am]

BILLING CODE 6750–01–S

FEDERAL TRADE COMMISSION

[File No. 082 3119]

Holly A. Bacon, d/b/a Cleansing Time Pro; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 17, 2008.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Holly A. Bacon, File No. 082 3119,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at (*http://secure.commentworks.com/ftc-HollyABacon*). To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*)

FOR FURTHER INFORMATION CONTACT: Richard Cleland, FTC Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-3088.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 18, 2008), on the World Wide Web, at *http://www.ftc.gov/os/2008/09/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the ADDRESSES section above, and must be received on or before the date specified in the DATES section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Holly A. Bacon, doing business as Cleansing Time Pro (''respondent'').

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns the advertising and promotion of products known as Cleansing Time Pro Black Salve & Tablets. According to their labels, these products contain ''blood root, galangal & zinc chloride in a base of blended

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

synergistic herbs (+ calcium in the tablets).'' Cleansing Time Pro Black Salve is an ointment that respondent recommends for external use. Alternatively, respondent recommends that consumers take the product internally by purchasing Black Salve Tablets or by placing an amount of the Black Salve ointment into a gelatin capsule.

The Commission's complaint charges that respondent claimed that Cleansing Time Pro Black Salve & Tablets were effective to treat, prevent, or cure numerous forms of cancer and various viral infections, including hepatitis, HIV, SARS, West Nile Virus, and Avian Bird Flu. The complaint alleges that respondent did not have a reasonable basis for these claims. The Commission's complaint also challenges respondent's testimonial advertising. The complaint alleges that respondent failed to disclose adequately that one of the endorsers was respondent Holly A. Bacon herself. The complaint alleges that this was a deceptive act or practice, because the fact that one of the endorsers had a material connection with Cleansing Time Pro would materially affect the weight and credibility given by consumers to the endorsement and would be material to consumers in their purchase or use of the products.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I requires respondent to have competent and reliable scientific evidence substantiating any claim that Cleansing Time Pro Black Salve & Tablets, or any other covered product or service, is effective in the prevention, treatment or cure of cancer, cancer, hepatitis, HIV, SARS, West Nile Virus, or Avian Bird Flu. A ''covered product or service'' is defined as any food, dietary supplement, or drug, including, but not limited to, Cleansing Time Pro Black Salve & Tablets, or any other health-related product, service, or program. Part II requires that any future claim about the absolute or comparative benefits, performance, efficacy, safety or side effects of any covered product or service be truthful and supported by competent and reliable scientific evidence.

Part III of the proposed order addresses the deceptive endorsement claim by requiring that respondent disclose any material connection between an endorser and respondent, if such a connection exists. ''Material connection'' is defined as any relationship that materially affects the weight or credibility of the user testimonial or endorsement and that would not reasonably be expected by consumers.

Part IV of the proposed order provides that the order does not prohibit respondent from making representations for any drug that are permitted in labeling for the drug under any tentative or final Food and Drug Administration (''FDA'') standard or under any new drug application approved by the FDA; and representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Part V of the proposed order requires respondent to compile a list of all consumers who purchased Cleansing Time Pro Black Salve & Tablets from respondent since July 1, 2005, and to mail a letter (Attached to the proposed order as Attachment A) to each purchaser describing the scientific evidence related to these products. Part VI prohibits respondent from providing any identifying information about her purchasers to anyone other than the Commission, another law enforcement agency, or as required by law.

Parts VII through X of the proposed order require respondent to keep copies of relevant advertisements and materials that substantiate claims made in the advertisements; to provide copies of the order to certain of her employees; to notify the Commission of her affiliation with any new health-related business or employment; and to file compliance reports with the Commission. Part XI of the proposed order is a ''sunset'' provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E8–23327 Filed 10–2–08; 8:45 am]

BILLING CODE 6750–01–S

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 of the aforementioned committee:

Time and Date: 8 a.m.–6 p.m., October 22, 2008; 8 a.m.–5 p.m., October 23, 2008.

Place: CDC, 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 Pneumococcal Vaccines; Anthrax Vaccine; General Recommendations; Human Papillomavirus Vaccines; Adult Immunization Schedules; 2009 Immunization Schedules for children 0–18 years of age; Hepatitis Vaccines; Japanese Encephalitis Vaccine; Rabies Vaccine Supply; Influenza; Immunization Safety Update; Vaccine Supply; Adolescent National Immunization Survey Results; Rotavirus Vaccines; MMRV Vaccine; and Tdap (Boostrix) in Adults.

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 CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 25, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–23397 Filed 10–2–08; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Prospective Granting of a Co-Exclusive License

AGENCY: Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i) that the Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS), is contemplating the granting of a co-exclusive worldwide license to practice the invention embodied in the patent application referred below to Mk-IX Technologies, having a place of business in Huntsville, Alabama. CDC intends to grant rights to practice this invention to no more than one other co-licensee. The patent rights in these inventions have been assigned to the government of the United States of America. The patent application to be licensed is:

Non-Provisional Patent Application

Title: Wipes and Methods for Removal of Metal Contamination from Surfaces.

Serial No. 11/039,178.

Filing date: 01/18/2005.

Issue Date: Patent pending.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments, and other materials relating to the contemplated license should be directed to Andrew Watkins, Director, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, Mailstop K–79, Atlanta, GA 30341, telephone: (770) 488–8610; facsimile: (770) 488–8615. Applications for an exclusive license filed in response to this notice will be treated as objections to the grant of the contemplated co-exclusive license. Only written comments and/or applications for a license which are received by CDC within thirty days of this notice will be considered. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552. A signed Confidential Disclosure Agreement will be required to receive a copy of any pending patent application.

Dated: September 26, 2008.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–23398 Filed 10–2–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10001, CMS–10009, CMS–10272 and CMS–10242]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Health Insurance Portability and Accountability Act (HIPAA) Nondiscrimination Provisions and Supporting Regulations in 45 CFR 146.121(h) and 121(i)(2)(i); *Use:* If coverage has been denied to any individual because the sponsor of a self-funded non-Federal governmental plan had exempt the plan from the nondiscrimination requirements under 45 CFR 146.180 ''Treatment of Non-Federal Governmental Plans'', and the plan sponsor subsequently chooses to bring the plan into compliance, the plan sponsor must comply with the requirements under 45 CFR 146.121(i)(2)(i) ''Special Transitional Rule for Self-Funded Non-Federal Governmental Plans Exempted under 45 CFR 146.180''. To bring the plan into compliance with the requirements, the plan must notify the individual that the plan will be coming into compliance, afford the individual an opportunity to enroll, specify the effective date of compliance, and inform the individual regarding any enrollment restrictions that may apply under the terms of the plan once the plan is in compliance. *Form Number:* CMS–10001 (OMB# 0938–0827); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 18; *Total Annual Responses:* 18; *Total Annual Hours:* 194.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Health Insurance Portability and Accountability Act (HIPAA) Nondiscrimination Provisions and Supporting Regulations in 45 CFR 146.121(f)(2)(v)(A); *Use:* Section 146.121 of the regulations requires Health plans or issuers to disclose in all plan materials the terms of certain wellness programs including the availability of a reasonable alternative standard. Plan participants and their dependents need this information to understand the rights they have under HIPAA. States and the Federal government may need the information supplied by issuers to properly perform their regulatory functions. *Form Number:* CMS–10009 (OMB# 0938–0819); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 2,600; *Total Annual Responses:* 2,600; *Total Annual Hours:* 1,300.

3. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Hospital Leadership Quality Assessment Tool (HLQAT); *Use:* In 2006, the Hospital Leadership Collaborative (HLC) launched a public-private partnership to develop a CMS-endorsed self-assessment tool, ''The Hospital Leadership and Quality Assessment Tool'' (HLQAT) to assist hospitals in the improvement of quality through enhanced hospital governance,

executive, physician, and clinical engagement. Hospitals leaders will take the HLQAT instrument via Web-based technology. This function will be carried out in conjunction with CMS and the Quality Improvement Organization (QIO) 9th Scope of Work (SOW), to convey the importance of this effort in relation to Medicare and other public priorities. This administration of the HLQAT seeks responses from approximately a dozen leaders in each hospital, including physicians (*e.g.*, CEO, CMO), board members, director-level, and mid-level clinical managers—these responses can provide a multi-level representation of hospital leadership showing its commitment to institutional change. *Form Number:* CMS–10272 (OMB# 0938–New); *Frequency:* Occasionally; *Affected Public:* Private Sector—Business or Other for-profits; *Number of Respondents:* 18,000; *Total Annual Responses:* 36,000; *Total Annual Hours:* 44,820.

4. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Emergency and Non-Emergency Ambulance Transports and Beneficiary Signature Requirements in 42 CFR 424.36(b); *Use:* In the CY 2008 Physician Fee Schedule (PFS) final rule with comment period, we created an additional exception to the beneficiary signature requirements in § 424.36(b) for emergency ambulance transports (72 FR 66406). The exception allows ambulance providers and suppliers to sign the claim on behalf of the beneficiary, at the time of transport, provided that certain documentation requirements are met. Following publication of the CY 2008 PFS final rule with comment period, ambulance provider and supplier stakeholders requested that we extend the exception in § 424.36(b)(6) to non-emergency ambulance transports, in instances where the beneficiary is physically or mentally incapable of signing the claim form.

The current submission of this information collection request relates to the collection of documentation pertaining to non-emergency ambulance transports. In addition, we are updating the collection of information that relates to the collection of documentation pertaining to emergency ambulance transports. *Form Number:* CMS–10242 (OMB# 0938–1049); *Frequency:* Occasionally; *Affected Public:* Private Sector—Business or Other for-profits and Not-for-profit institutions; *Number of Respondents:* 9,000; *Total Annual Responses:* 13,185,835; *Total Annual Hours:* 1,098,819.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *December 2, 2008*.

1. *Electronically*. You may submit your comments electronically to *http://www.regulations.gov*. Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 26, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8–23414 Filed 10–2–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10261, CMS–10182, CMS–10166 and CMS–10150]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1.*Type of Information Collection Request:* New collection; *Title of Information Collection:* Part C Medicare Advantage (MA) Reporting Requirements and Supporting Regulations in 42 CFR 422.516 (a); *Use:* CMS has authority to establish reporting requirements for Medicare Advantage Organizations (MAOs) as described in 42 CFR 422.516(a). Under that authority, each MAO must have an effective procedure to develop, compile, evaluate, and report to CMS, to its enrollees, and to the general public, at the times and in the manner that CMS requires, and while safeguarding the confidentiality of the doctor-patient relationship, statistics and other information with respect to the cost of its operations, patterns of service utilization, availability, accessibility, and acceptability of its services, developments in the health status of its enrollees, and other matters that CMS may require.

CMS will not require cost plans to comply with the following reporting requirements: Benefit utilization; procedure frequency; and serious reportable adverse events. However, CMS has determined that it is essential that all beneficiaries understand rules and requirements of the Medicare plans which they are being invited to join. Prospective enrollees in cost plans should be furnished accurate information by qualified sales people, consistent with CMS' expectation for prospective enrollees in other play types. Thus, CMS is requiring reporting on certain measures CMS' believes is critical in monitoring cost plans. Additionally, CMS believes that section 1876(i)(1)(D) of the Act, and 42 CFR 417.126(a)(6) permits CMS to require cost plans to report to CMS the data identified as follows: Provider network adequacy; grievances; organization determinations/reconsiderations; employer group plan sponsor; agent training and testing; agent commission structure and plan oversight of agents.

Data collected via Medicare Part C Reporting Requirements will be an integral resource for oversight,

monitoring, compliance and auditing activities necessary to ensure quality provision of the benefits provided by MA plans to enrollees. Refer to the ''Summary of Revisions'' document for a list of the recent collection changes. *Form Number:* CMS–10261 (OMB# 0938–New); *Frequency:* Yearly, Quarterly, and Semi-annually; *Affected Public:* Business or other for-profits; *Number of Respondents:* 718; Total Annual Responses: 12,709; *Total Annual Hours:* 286,944.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Model Creditable Coverage Disclosure Notices; *Use:* Section 1860D–1 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) and implementing regulations at 42 CFR 423.56 require that entities that offer prescription drug benefits under any of the types of coverage described in 42 CFR 423.56 (b) provide a disclosure of creditable coverage status to all Medicare Part D eligible individuals covered under the entity's plan informing them whether such coverage meets the actuarial requirements specified in guidelines provided by CMS.

These disclosure notices must be provided to Part D eligible individuals, at minimum, at the following times: (1) Prior to an individual's initial enrollment period for Part D, as described under § 423.38 (a); (2) prior to the effective date of enrollment in the entity's coverage, and upon any change in creditable status; (3) prior to the commencement of the Part D Annual Coordinated Election Period (ACEP) which begins on November 15 of each year, as defined in § 423.38 (b); and (4) upon request by the individual. In an effort to reduce the burden associated with providing these notices, our final regulations allow most entities to provide notices of creditable and non-creditable status with other information materials that these entities distribute to beneficiaries.

This collection has been updated by eliminating the separate Model Personalized Disclosure Notice. CMS has incorporated the personalized information into the Model Creditable Disclosure Notice and the Model Non-Creditable Disclosure Notice for use by the public *Form Number:* CMS–10182 (OMB# 0938–0990); *Frequency:* Yearly and Semi-annually; *Affected Public:* Federal Government, Business or Other For-Profits and Not-for-Profit Institutions, and State, Local or Tribal Governments; *Number of Respondents:* 1,225,173; *Total Annual Responses:* 1,225,173; *Total Annual Hours:* 522,204.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Payment Error Rate Measurement in Medicaid and the State Children Health Insurance Program (SCHIP); *Use:* The Improper Payments Information Act (IPIA) of 2002 requires CMS to produce national error rates for Medicaid and State Children's Health Insurance Program (SCHIP). To comply with the IPIA, CMS will engage a Federal contractor to produce the error rates in Medicaid and SCHIP.

The States will be requested to submit, at their option, test data which include full claims details to the contractor prior to the quarterly submissions to detect potential problems in the dataset and ensure the quality of the data. These States will be required to submit quarterly claims data to the contractor who will pull a statistically valid random sample, each quarter, by strata, so that medical and data processing reviews can be performed. State-specific error rates will be based on these review results.

CMS needs to collect the claims data, medical policies, and other information from States as well as medical records from providers in order for the contractor to sample and review adjudicated claims in those States selected for review. Based on the reviews, state-specific error rates will be calculated which will serve as the basis for calculating national Medicaid and SCHIP error rates.

This revision of the currently approved collection contains minor revisions to the information collection requirements. There is a 10-hour increase in burden per State per program as part of a new process. Based on the past experience in PERM operation, the adjustment is made to ensure the quality of the data will comply with the data requirement during the measurement. *Form Number:* CMS–10166 (OMB# 0938–0974); *Frequency:* Quarterly, Yearly; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 34; *Total Annual Responses:* 4,080; *Total Annual Hours:* 28,560.

4.*Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Collection of Drug Pricing and Network Pharmacy Data from Medicare Prescription Drug Plans (PDPs and MA–PDs) and Supporting Regulations in 42 CFR 423.48; *Use:* Both stand alone prescription drug plans (PDPs) and Medicare Advantage Prescription Drug (MA–PDs) plans are required to submit drug pricing and pharmacy network data to CMS and these data are made publicly available to people with Medicare through the Medicare Prescription Drug Plan Finder Web tool on *http://www.medicare.gov.* Drug prices vary across a plans pharmacy network based on the contracts that each plan negotiates with each pharmacy or pharmacy chain in their networks. The pharmacy networks can change during the course of the year as new pharmacies open, close, change ownership, or plans negotiate new contracts with pharmacies resulting in different dispensing fees for prescriptions. Drug prices also change frequently due to the daily fluctuation of the Average Wholesale Price (AWP), thus plans increase or decrease their drug prices to reflect these changes. The purpose of the data is to enable prospective and current Medicare beneficiaries to compare, learn, select and enroll in a plan that best meets their needs. The database structure provides the necessary drug pricing and pharmacy network information to accurately communicate plan information in a comparative format. *Form Number:* CMS–10150 (OMB# 0938–0951); *Frequency:* Bi-weekly; *Affected Public:* Business or other for-profits; *Number of Respondents:* 680; *Total Annual Responses:* 17,680; *Total Annual Hours:* 70,720.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on*November 3, 2008.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: September 26, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8–23415 Filed 10–2–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request; Proposed Projects

Title: Supporting Healthy Marriage Project Baseline Data Collection Extension.

OMB No.: 0970–0299.

Description: The Administration for Children and Families (ACF) is conducting an evaluation study titled Supporting Healthy Marriage (SHM). This is a large-scale, multi-site, rigorous test of marriage and relationship skills education programs for low-income married couples. The baseline information collection for the study was previously approved by the Office of Management and Budget (OMB Number 0970–0299) and expires on May 31, 2009. The purpose of this notice is to inform the public of ACF's intent to request an extension of this clearance prior to its expiration.

The SHM project is founded on research that indicates that both adults in healthy marriages and their children do better on a host of outcomes. The evaluation study will determine the interim and long-term effectiveness of eight local programs by comparing outcomes on a range of measures for couples and children in the program group to a comparable group of couples randomly assigned to a control group.

Baseline information is collected from couples at the time they volunteer to participate in a SHM program. The baseline data collection provides information about the characteristics of the husband and wife and information about their attitudes and beliefs about their relationship at study entry. This information will be used to inform the public, program operators and policymakers about the characteristics of married couples who volunteer for marriage education programs, and, among other uses, it will be used to define and conduct analyses of key sub groups, addressing a key study question of who benefits most from this type of marriage education service.

Respondents: Low-income married couples.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response (minutes)	Estimated annual burden hours
Eligibility Checklist	3,126	1	5	261
Informed Consent Form	3,126	1	10	521
Baseline Information Form	3,126	1	9	469
Self-Administered Questionnaire	3,126	1	11	573
Contact Information Sheet	3,126	1	10	521

Estimated Annual Burden Hours: 2,345.

Additional Information: In compliance with the requirements of section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. E-mail address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 26, 2008.

Brendan C. Kelly,

OPRE Reports Clearance Officer.

[FR Doc. E8–23203 Filed 10–2–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement

AGENCY: Office of Child Support Enforcement, ACF, DHHS.

ACTION: Notice to award a sole-source discretionary grant.

CFDA#: 93.564.

Legislative Authority: Section 1115 of the Social Security Act [42 U.S.C.1315] provides funds and authority to award grants to State IV–D agencies for experimental, pilot, or demonstration projects.

Amount of Award: $703,000.00.

Project Period: September 30, 2008–February 27, 2010.

SUMMARY: A sole-source discretionary grant is being awarded to the Office of the Attorney General, Texas, to provide marriage and relationship education, parenting skills training, case management and home-visiting activities to unwed, new or expectant parents in Tom Green and Harris counties, Texas. The project will examine child support outcomes of families in the treatment and control groups from this project and from a previous project. This grant will also enable collection of data on child well-being outcomes, such as number of well-baby health visits, immunizations, home-safety (using a standardized checklist completed by a home visitor), child development (using the Ages and Stages Questionnaire, a standardized tool), and quality of the home environment.

FOR FURTHER INFORMATION CONTACT: Myles Schlank, Supervisory Program Specialist, Office of Child Support Enforcement, 370 L'Enfant Promenade, SW., Washington, DC 20047. Telephone:

(202) 401–9329, e-mail: *myles.schlank@acf.hhs.gov.*

Dated: September 26, 2008.

Donna Bonar,

Deputy Commissioner, Office of Child Support Enforcement.

[FR Doc. E8–23310 Filed 10–2–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request the Hispanic Community Health Study (HCHS)/Study of Latinos (SOL)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval. *Proposed Collection: Title:* Hispanic Community Health Study (HCHS)/Study of Latinos (SOL). *Type of Information Collection Request:* Revision. OMB# 0925–0584, exp. 2/28/2011. *Need and Use of Information Collection:* The Hispanic Community Health Study (HCHS)/Study of Latinos (SOL) will identify risk factors for cardiovascular and lung disease in Hispanic populations and determine the role of acculturation in the prevalence and development of these diseases. Hispanics, now the largest minority population in the US, are influenced by factors associated with immigration from different cultural settings and environments, including changes in diet, activity, community support, working conditions, and health care access. This project is a multicenter, six-and-a-half year epidemiologic study and will recruit 16,000 Hispanic men and women aged 18–74 in four community-based cohorts in Chicago, Miami, San Diego, and the Bronx. The study will also examine measures of obesity, physical activity, nutritional habits, diabetes, lung and sleep function, cognitive function, hearing, and dental conditions. Closely integrated with the research component will be a community and professional education component, with the goals of bringing the research results back to the community, improving recognition and control of risk factors, and attracting and training Hispanic researchers in epidemiology and population-based research. *Frequency of Response:* The participants will be contacted annually. *Affected Public:* Individuals or households; Businesses or other for profit; Small businesses or organizations. *Type of Respondents:* Individuals or households; physicians. The annual reporting burden is as follows: *Estimated Number of Respondents:* 30,320; *Estimated Number of Responses per Respondent:* 2.238; *Average Burden Hours Per Response: 0.7161*; and *Estimated Total Annual Burden Hours Requested: 48,583.* The annualized cost to respondents is estimated at $753,285, assuming respondents time at the rate of $15 per hour and physician time at the rate of $55 per hour. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATE OF ANNUAL HOUR BURDEN

Type of response	Number of respondents	Frequency of responses	Average hours per response	Annual hour burden
Participant Recruitment Contact	29,036	1	0.123	3,571
Participant Examinations and Questionnaires	[1] 5,333	1	6.49	34,611
Participant Telephone Interviews	[1] 5,333	1	1.83	9,759
Physician, Medical Examiner, next of kin or other contact follow-up [2]	1,284	1	.50	642
Total unique respondents	30,320	.....	.....	48,583

[1] Subset of participant recruitment contact

[2] Annual burden is placed on doctors and respondent relatives/informants through requests for information which will help in the compilation of the number and nature of new fatal and nonfatal events

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Larissa Aviles-Santa, Deputy Project Officer, NIH, NHLBI, 6701 Rockledge Drive, MSC 7936, Bethesda, MD 20892–7936, or call non-toll-free number 301–435–0450 or e-mail your request, including your address to: *AvilessantaL@NHLBI.NIH.GOV.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: September 22, 2008.

Michael S. Lauer,

Director, Division of Prevention and Population Sciences.

Suzanne Freeman,

NHLBI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E8–23442 Filed 10–2–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request: The National Survey of Physicians Attitudes Regarding the Care of Cancer Survivors (SPARCCS) (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on July 31, 2008 (Vol. 73, No. 148, p. 44751) and allowed 60-days for public comment. There were no public comments received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: NIH–Survey of Physicians Attitudes Regarding the Care of Cancer Survivors (SPARCCS). *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The purpose of this study is to identify the beliefs, knowledge, attitudes, and practices of primary care physicians and cancer specialists regarding the components described by the IOM. These data will inform the process of standardization of survivorship care practices; augment the data collected in other cancer survivorship studies and monitor the progress being made toward achieving NCI strategic goals of improving the quality of cancer care across the cancer control continuum. This questionnaire adheres to The Public Health Service Act, Section 412 (42 U.S.C. 285a–1) and Section 413 (42 U.S.C. 285a–2), which authorizes the Division of Cancer Control and Population Sciences of the National Cancer Institute (NCI) to establish and support programs for the detection, diagnosis, prevention and treatment of cancer; and to collect, identify, analyze and disseminate information on cancer research, diagnosis, prevention and treatment. *Frequency of Response:* Once. *Affected Public:* Individuals and Businesses. *Type of Respondents:* Primary care and medical oncology physicians practicing in a non-federal facility. The annual reporting burden is estimated at 904 hours as shown in Table 1. The total burden hours is estimated at 1808 hours over the two year field period of the study. There is no capital, operating or maintenance costs to report.

TABLE 1—ESTIMATES OF ANNUAL BURDEN HOURS

Type of respondents	Survey	Number of respondents	Frequency of response	Average time per response (minutes/hour)	Annual burden hours
Receptionists	Screener	2,033	1	5/60	169
Family Practice	PCP Instrument	250	1	20/60	83
General Internists	PCP Instrument	250	1	20/60	83
OB/GYNs	PCP Instrument	50	1	20/60	17
Oncologists	Oncology Instrument	550	1	20/60	183
Receptionists & Administrators	Follow-Up Phone Calls.	1,103	4	5/60	368
Total		4,236			904

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments To OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Attention: NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Arnie Potosky, Ph.D., Task Order Monitor, Applied Research Branch, Division of Cancer Control and Population Sciences, National Cancer Institute, National Institutes of Health, Bethesda, Maryland, 20892–7344, or call non-toll-free number (301)402–3362 or e-mail your request, including your address to: *potoskya@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: August 23, 2008.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison Office, National Institutes of Health.

[FR Doc. E8–23443 Filed 10–2–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and

development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057; *fax:* 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Matriptase Hypomorphic Mouse Model of a Human Ichthyosis

Description of Technology: Available for licensing are mice with greatly reduced levels of matriptase, a membrane protease involved in epithelial development, immune function, and carcinogenesis. These mice were created to study autosomal recessive ichthyosis with hypotricosis (ARIH), an inherited human disease that has been linked to a mutation in the ST14 gene that encodes matriptase. These mice manifest the same defects seen in people afflicted by ARIH, so it can be an effective model for studying the role of matriptase in disorders that affect skin development.

Applications:

• Research tool for skin development research.

• Model to develop and test therapeutics for treating skin disorders, including skin cancer.

• Model immunity and allergy.

Advantages: Well characterized animal model closely related to a human genetic disorder.

Market: Ichthyosis is a series of genetic skin diseases characterized by dry, thickened, scaling skin that affects more than one million Americans. Presently, there is no cure for ichthyosis, only treatments to help manage symptoms.

Development Status: Well characterized mouse model of human ARIH.

Inventors: Thomas H. Bugge (NIDCR) *et al.*

Publication: K List et al. Autosomal ichthyosis with hypotrichosis syndrome displays low matriptase proteolytic activity and is phenocopied in ST14 hypomorphic mice. J Biol Chem. 2007 Dec 14;282(50):36714–36723.

Patent Status: HHS Reference No. E–323–2008/0—Biological Material. Patent protection is not being pursued for this technology.

Licensing Status: Available for non-exclusive licensing under a Biological Materials License Agreement.

Licensing Contact: Adaku Nwachukwu, J.D.; 301–435–5560; *madua@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Dental and Craniofacial Research, Oral and Pharyngeal Cancer Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact David W. Bradley, Ph.D. at 301–402–0540 or *bradleyda@nidcr.nih.gov* for more information.

Prostatic Adenocarcinoma Cells Expressing or Lacking the Tumor Suppressor Gene PTEN

Description of Technology: PTEN is a tumor suppressor gene that is frequently deleted or mutated in a variety of human cancers, including prostate, breast, endometrial, lung, and ovarian cancers. In prostate cancer cells, PTEN deletion is the most common event observed. The loss of PTEN is thought to play and important role in tumor cell proliferation and metastasis due to a lack of control of the signaling pathways that mediate cellular processes such as apoptosis and migration. Previously PTEN had been shown to downregulate cyclin D1 expression as well as regulate p53 protein levels and transcriptional activity, and recently the inventors of this technology have shown that PTEN decreases surface IGF–IR protein levels in prostate cancer cell lines in an Akt-independent manner.

PC3 cells are prostate cancer cells that lack PTEN gene. This technology describes PC3 cells that overexpress the PTEN gene. These cell lines can be used to study the role of the PTEN gene in cancer growth and metastasis.

Market:

• Prostate cancer is the most common type of cancer found in American men, and it has been estimated that there were more than 230,000 new cases in the U.S. in 2007. Prostate cancer is also the second leading cause of cancer death in men.

• In the U.S. over 2 million women have been treated for breast cancer, with more than 200,000 women diagnosed in the year 2007 alone. Breast cancer is the second leading cause of cancer death in women.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Derek LeRoith and Michael Quon (NIDDK).

Publication: H Zhao et al. PTEN inhibits cell proliferation and induces apoptosis by downregulating cell surface IGF–IR expression in prostate cancer cells. Oncogene 2004 Jan 22;23(3):786–794.

Patent Status: HHS Reference No. E–292–2008/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing.

Licensing Contact: Whitney A. Hastings; 301–451–7337; *hastingw@mail.nih.gov*.

Fully Human Anti-Human NKG2D Monoclonal Antibody

Description of Technology: Available for licensing is a fully human monoclonal antibody (KYK–2.0 IgG1) with high specificity and affinity to human NKG2D, a stimulatory or costimulatory receptor located on the cell surface of natural killer (NK) cells and CD8+ T cells. NKG2D plays a role in mediating immune responses in autoimmune and infectious diseases and cancer and it makes NKG2D an attractive target for therapeutic intervention. Nonetheless, monoclonal antibodies to NKG2D that are suitable for clinical investigations have not been available. In solution, KYK–2.0 IgG1 interferes with the cytolytic activity of human NK cells. When immobilized, KYK–2.0 IgG1 induces human NK cell activation. The dual antagonistic and agonistic activity promises a broad range of therapeutic applications.

Application: Therapeutic fully human monoclonal antibody for a variety of indications including autoimmune and infectious diseases, cancer, and transplantation.

Advantage: The dual antagonistic and agonistic activity in concert with low immunogenicity suggests broad and potent therapeutic utility of KYK–2.0 IgG1 and its derivatives.

Development Status: The technology is currently in the pre-clinical stage of development.

Market:

• Monoclonal antibody market is one of the fastest growing and most lucrative sectors of the pharmaceutical industry with a 48.1% growth between 2003 and 2004.

• Monoclonal antibody market is estimated to be worth $30.3 billion in 2010.

Inventors: Christoph Rader and Ka Yin Kwong (NCI)

Related Publication: KY Kwong, S Baskar, H Zhang, CL Mackall, C Rader. Generation, affinity maturation, and characterization of a human anti-human NKG2D monoclonal antibody with dual antagonistic and agonistic activity. J Mol

Biol., in press (available online 2008 Sep 16, *doi:10.1016/j.jmb.2008.09.008*).

Patent Status: U.S. Provisional Application No. 61/086,027 filed 04 Aug 2008 (HHS Reference No. E–211–2008/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov*.

Collaborative Research Opportunity: The Experimental Transplantation and Immunology Branch, Center for Cancer Research, National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the fully human anti-human NKG2D monoclonal antibody KYK–2.0 IgG1. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Methods for the Detection and Treatment of Lung Cancer

Description of Technology: Lung cancer is the third most common malignant disease and the first leading cause of cancer death in the western world. Non-small cell lung cancer (NSCLC) is one of the leading causes of death accounting for nearly 30% of all cancer deaths. Despite considerable research, lung cancer remains difficult to diagnose and treat effectively. Current chemotherapeutic regimens provide poor survival benefits and the unmet clinical need among lung cancer patients is very high. The prognosis is very bleak since most patients are diagnosed with lung cancer at a late stage.

The inventors have discovered that approximately 20% of common adult NSCLC have an aberrant activation of CRTC gene members with marked induction of CRTC regulated genes. CRTC activation is linked with the loss of LKB1/STK11 kinases which results in CRTC underphosphorylation and enhanced nuclear localization. As the LKB1/STK11 signaling pathways has been exploited in potential cancer therapeutic treatments, this novel unrecognized consequence the loss of LKB1/STK11 function associated with aberrant CRTC activation in cancer offers new candidate diagnostic and therapeutic targets for NSCLC.

Applications:

• Novel cancer diagnostics and therapeutic treatments.

• Method to detect and treat lung cancer.

Development Status: The technology is currently in the pre-clinical stage of development.

Market:

• Lung cancer is the leading cause of cancer deaths among both men and women in the U.S.

• The NSCLC market was estimated to be worth US$3.7 billion in 2006 and will increase by 17% by 2012.

Inventors: Frederic Kaye and Amy Coxon (NCI).

Patent Status: U.S. Provisional Application No.61/036,830 filed 13 Mar 2008 (HHS Reference No. E–069–2008/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; wongje@mail.nih.gov.

Human Perilipin Proteins

Description of Technology: Perilipins are important regulators of lipid storage in fat cells. These proteins stabilize fat droplets and control their breakdown by controlling access of lipid-degrading enzymes. Since these proteins are central to the storage and breakdown of body fat it very likely that they are crucial for the regulation of body weight. Perilipin expression is elevated in obese animals and humans. Mutations in the perilipin gene are associated with increased risk of obesity in women. Importantly, when the perilipin gene is inactivated the obesity of model mice is reversed. Therefore, perilipin could be a good candidate for therapeutic targeting to treat obesity in humans.

This NIH invention claims DNA sequences of splice variants that code for human perilipin protein isoforms and methods of expressing the recombinant protein in bacteria or mammalian cells. It also claims substantially purified perilipin proteins and methods for detecting their presence in a biological sample.

Applications:

• Drug development for obesity.

• Diagnostics for detection of perilipins.

• Antigens for antibody production.

• Markers for identifying true adipocytes.

Advantages:

• Cloned DNA sequences ready for protein expression.

• Isoforms allow greater flexibility in designing therapeutics.

Development Status: Pre-clinical.

Inventors: Constantine Londos, Andrew S. Greenberg, Alan R. Kimmel, John J. Egan (NIDDK).

Related Publication: AS Greenberg et al. Perilipin, a major hormonally regulated adipocyte-specific phosphoprotein associated with the periphery of lipid storage droplets. J Biol Chem. 1991 Jun 15;266(17):11341–11346.

Patent Status:

• U.S. Patent No. 6,074,842 issued 13 Jun 2000 (HHS Reference No. E–111–1991/0–US–03).

• U.S. Patent No. 5,585,462 issued 17 Dec 1996 (HHS Reference No. E–111–1991/1–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Surekha Vathyam, PhD; 301–435–4076; *vathyams@mail.nih.gov*.

Dated: September 29, 2008.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–23436 Filed 10–2–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057; *fax:* 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Murine Monoclonal Antibodies Effective To Treat Respiratory Syncytial Virus

Description of Technology: Available for licensing through a Biological Materials License Agreement are the murine MAbs described in Beeler et al, ''Neutralization epitopes of the F glycoprotein of respiratory syncytial virus: effect of mutation upon fusion function,'' J Virol. 1989 Jul;63(7):2941–

2950. The MAbs that are available for licensing are the following: 1129, 1153, 1142, 1200, 1214, 1237, 1112, 1269, and 1243. One of these MAbs, 1129, is the basis for a humanized murine MAb (see U.S. Patent 5,824,307 to humanized 1129 owned by MedImmune, Inc.), recently approved for marketing in the United States. MAbs in the panel reported by Beeler et al. have been shown to be effective therapeutically when administered into the lungs of cotton rats by small-particle aerosol. Among these MAbs several exhibited a high affinity (approximately 10^9M^{-1}) for the RSV F glycoprotein and are directed at epitopes encompassing amino acid 262, 272, 275, 276 or 389. These epitopes are separate, nonoverlapping and distinct from the epitope recognized by the human Fab of U.S. Patent 5,762,905 owned by The Scripps Research Institute.

Applications: Research and drug development for treatment of respiratory syncytial virus.

Inventors: Robert M. Chanock, Brian R. Murphy, Judith A. Beeler, and Kathleen L. van Wyke Coelingh (NIAID).

Patent Status: HHS Reference No. B–056–1994/1—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for non-exclusive licensing under a Biological Materials License Agreement.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov.*

Neutralizing Monoclonal Antibodies to Respiratory Syncytial Virus

Description of Technology: Respiratory syncytial virus (RSV) is the most common cause of bronchiolitis and pneumonia among infants and children under 1 year of age. Illness begins most frequently with fever, runny nose, cough, and sometimes wheezing. During their first RSV infection, between 25% and 40% of infants and young children have signs or symptoms of bronchiolitis or pneumonia, and 0.5% to 2% require hospitalization. Most children recover from illness in 8 to 15 days. The majority of children hospitalized for RSV infection are under 6 months of age. RSV also causes repeated infections throughout life, usually associated with moderate-to-severe cold-like symptoms; however, severe lower respiratory tract disease may occur at any age, especially among the elderly or among those with compromised cardiac, pulmonary, or immune systems.

This invention is a human monoclonal antibody fragment (Fab) discovered utilizing phage display technology. The neutralizing monoclonal antibody was isolated and its binding site was identified. Fab F2–5 is a broadly reactive fusion (F) protein-specific recombinant Fab generated by antigen selection from a random combinatorial library displayed on the surface of filamentous phage. In an in vitro plaque-reduction test, the Fab RSVF2–5 neutralized the infectivity of a variety of field isolates representing viruses of both RSV subgroups A and B. The Fab recognized an antigenic determinant that differed from the only other human anti-F monoclonal antibody (RSV Fab 19) described thus far. A single dose of 4.0 mg of Fab RSVF2–5/kg of body weight administered by inhalation was sufficient to achieve a 2000-fold reduction in pulmonary virus titer in RSV-infected mice. The antigen-binding domain of Fab RSVF2–5 offers promise as part of a prophylactic regimen for RSV infection in humans.

Application: Respiratory Syncytial Virus prophylaxis/therapeutic.

Development Stage: The antibodies have been synthesized and preclinical studies have been performed.

Inventors: Brian Murphy (NIAID), Robert Chanock (NIAID), James Crowe (NIAID), *et al.*

Publication: JE Crowe *et al.* Isolation of a second recombinant human respiratory syncytial virus monoclonal antibody fragment (Fab RSVF2–5) that exhibits therapeutic efficacy in vivo. J Infect Dis. 1998 Apr;177(4):1073–1076.

Patent Status: HHS Reference No. E–001–1996/0—U.S. and Foreign Rights Available.

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov*.

Human Neutralizing Monoclonal Antibodies to Respiratory Syncytial Virus and Human Neutralizing Antibodies to Respiratory Syncytial Virus

Description of Technology: This invention is a human monoclonal antibody fragment (Fab) discovered utilizing phage display technology. It is described in Crowe *et al.* , Proc Natl Acad Sci USA. 1994 Feb 15;91(4):1386–1390 and Barbas *et al.* , Proc Natl Acad Sci USA. 1992 Nov 1;89(21):10164–10168. This MAb binds an epitope on the RSV F glycoprotein at amino acid 266 with an affinity of approximately 10^9M^{-1}. This MAb neutralized each of 10 subgroup A and 9 subgroup B RSV strains with high efficiency. It was effective in reducing the amount of RSV in lungs of RSV-infected cotton rats 24 hours after treatment, and successive treatments caused an even greater reduction in the amount of RSV detected.

Applications: Research and drug development for treatment of respiratory syncytial virus.

Inventors: Robert M. Chanock (NIAID), Brian R. Murphy (NIAID), James E. Crowe Jr. (NIAID), *et al.*

Patent Status: U.S. Patent 5,762,905 issued 09 Jun 1998 (HHS Reference No. E–032–1993/1–US–01); U.S. Patent 6,685,942 issued 03 Feb 2004 (HHS Reference No. E–032–1993/1–US–02); U.S. Patent Application No. 10/768,952 filed 29 Jan 2004 (HHS Reference No. E–032–1993/1–US–03).

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301/435–4646; *soukasp@mail.nih.gov.*

Dated: September 26, 2008.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–23437 Filed 10–2–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2); notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Early Diagnosis Using Nanotechnology-Based Imaging and Sensing.

Date: October 23, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 406, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Joyce C. Pegues, PhD, Scientific Review Officer, Special Review

and Logistics Branch, Division of Extramural Activities, NIH National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892–8329, 301–594–1286, *peguesj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–23454 Filed 10–2–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Sleep, Circadian Function and Cardiometabolic Disease.

Date: October 31, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Elaine Lewis, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel SWAN.

Date: November 3, 2008.

Time: 1:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20814. (Telephone Conference Call)

Contact Person: Alicja L. Markowska, PhD, DSC, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–23445 Filed 10–2–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0007]

Privacy Act of 1974; Department of Homeland Security Advisory Committees System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 and as part of the Department of Homeland Security's ongoing effort to review and update legacy system of record notices, the Department of Homeland Security proposes to consolidate two legacy record systems: FEMA/ADM–3– Advisory Committee Files (55 FR 37182 September 7, 1990) and DOT/CG 586 Chemical Transportation Industry Advisory Committee (65 FR 19475 April 11, 2000) into one system, titled Department of Homeland Security Advisory Committees. This system will allow the Department of Homeland Security to collect and maintain information on advisory committee members and applicants. Categories of individuals, categories of records, and the routine uses of these legacy system of records notices have been consolidated and updated to better reflect the Department's advisory committee record systems. This consolidated system will be included in the Department of Homeland Security's inventory of system records.

DATES: Submit comments on or before November 3, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0007 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change and may be read at *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107–296, Section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS) and its components and offices have relied on preexisting Privacy Act systems of records notices for the collection and maintenance of records that concern any individual who serves on a DHS-wide and/or component specific advisory committee.

As part of its efforts to streamline and consolidate its records systems, DHS is establishing a new agency-wide system of records under the Privacy Act (5 U.S.C. 552a) for DHS advisory committees. This record system will allow all component parts of DHS to collect and preserve the required personally identifiable information needed for members who apply for or participate in DHS advisory committees. The system will consist of both electronic and paper records and will be used by DHS and its components and offices to maintain records of Federal government employees and other persons who participate in DHS-sponsored Federal advisory committees. The data will be collected by individual name, name of committee, and/or other unique personal identifier. The collection and maintenance of this information will assist DHS in maintaining a list of members of the various Federal advisory committees, internal committees, and interagency committees to provide DHS with information on committee functions,

meeting dates, agendas, and other purposes for managing committees.

In accordance with the Privacy Act of 1974 and as part of DHS's ongoing effort to review and update legacy system of record notices, DHS proposes to consolidate two legacy record systems: FEMA/ADM–3-Advisory Committee Files (55 FR 37182 September 7, 1990) and DOT/CG 586 Chemical Transportation Industry Advisory Committee (65 FR 19475 April 11, 2000) into one system, titled Department of Homeland Security Advisory Committees. This system will allow DHS to collect and maintain information on advisory committee members and applicants. Categories of individuals, categories of records, and the routine uses of these legacy system of records notices have been consolidated and updated to better reflect the Department's advisory committee record systems. This consolidated system will be included in DHS's inventory of system records.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals to more easily find such files within the agency. Below is the description of the Department of Homeland Security Advisory Committees System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget (OMB) and to Congress.

SYSTEM OF RECORDS: DHS/ALL–009

SYSTEM NAME:

Department of Homeland Security Advisory Committees.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at several Headquarters locations and in component offices of DHS in both Washington, DC, and field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include any individual who applied to be on a committee, is currently serving on a committee, and/or has served on a committee and is no longer serving. Committee alternates are also included in this system. Individuals may be Federal employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system may include:

- Individual's name;
- Social security number;
- Place and date of birth;
- Gender;
- Ethnicity;
- Home address;
- E-mail address;
- Telephone number(s);
- Political affiliation, when appropriate;
- Work address;
- Employer;
- Title;
- Marital status;
- Military service;
- Education;
- Registration in professional societies;
- Work experience;
- Record of performance;
- Publications authored;
- Membership on boards and committees;
- Professional awards; and
- Other information which can be used to determine if the individual is fit to serve on the committee, such as description of private associations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; the Federal Records Act, 44 U.S.C. 3101; Pub. L. 92–463, Federal Advisory Committee Act, as amended; 5 U.S.C., App. 2 § 8; E.O. 9397; 14 U.S.C. 632; The Omnibus Budget Reconciliation Act of 1987, Pub. L. 101–103, sec 9503(c), 101 Stat. 1330, 1330–381 (1987) (codified at 19 U.S.C. sec 2071 note).

PURPOSE(S):

The purpose of this system is to collect and maintain information on advisory committee members. This system also collects and maintains information on applicants to identify the most qualified applicant and ensure a balanced advisory committee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records of information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where the Department of Justice or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To an appropriate Federal, State, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or it the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request.

I. To the General Services Administration to facilitate committee management within the Federal Government.

J. To an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee.

K. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena from a court of competent jurisdiction.

L. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

By individual name and/or personal identifier.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records documenting the committee's establishment, membership, policy, organization, deliberations, findings, and recommendations are permanent. These files are transferred to the National Archives and Records Administration on termination of the committee, in accordance with National Archives and Records Administration General Records Schedule 26. Earlier transfer is authorized for committees operating for three years or longer. Files relating to day-to-day committee activities and/or do not contain unique information of historical value are destroyed/deleted when the records are three years old.

SYSTEM MANAGER AND ADDRESS:

For Headquarters components of DHS, the System Manager is the Director of Departmental Disclosure, Department of Homeland Security, Washington, DC 20528. For components of DHS, the System Manager can be found at *http://www.dhs.gov/foia* under ''contacts.''

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters or the component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0550, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486.

In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Identify which component(s) of the Department you believe may have the information about you,
- Specify when you believe the records would have been created,
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

From the individual of record.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: September 23, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–23304 Filed 10–2–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0014]

Privacy Act of 1974; Department of Homeland Security Childcare System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to reclassify one legacy record system titled, DOT/CG 634 Childcare Program Record System (65 FR 19475 April 11, 2000), as a new Department of Homeland Security-wide records system, titled Childcare. This system will allow the Department of Homeland Security to collect and maintain Department-sponsored childcare program records. Categories of individuals, categories of records, and the routine uses of this legacy system of records notice have been reviewed and updated to better reflect the Department's childcare record system. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before November 3, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0014 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.
- *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change and may be read at *http://www.regulations.gov,* including any personally identifiable information provided.
- *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107–296, Section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS) and its components and offices have relied on preexisting Privacy Act systems of records notices for the collection and maintenance of records that account for children enrolled in DHS-sponsored childcare programs.

As part of its efforts to streamline and consolidate its Privacy Act records systems, DHS is establishing a new agency-wide system of records under the Privacy Act (5 U.S.C. 552a) for DHS childcare records. This will ensure that all components of DHS follow the same privacy rules for collecting and maintaining childcare records regarding DHS employees, other Federal employees, and other individuals who use DHS-sponsored childcare programs. DHS and its components and offices will use the system to account for DHS employees, other Federal employees, and other individuals who use DHS-sponsored childcare programs and their children.

In accordance with the Privacy Act of 1974, DHS is giving notice that it proposes to reclassify one legacy record system titled, DOT/CG 634 Childcare Program Record System (65 FR 19475 April 11, 2000), as a new DHS-wide records system, titled Childcare. This system will allow DHS to collect and maintain Department-sponsored childcare program records. Categories of individuals, categories of records, and the routine uses of this legacy system of records notice have been reviewed and updated to better reflect the Department's childcare record system. This updated system will be included DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals to more easily find such files within the agency. Below is the description of the Childcare System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget (OMB) and to Congress.

SYSTEM OF RECORDS: DHS/ALL–012

SYSTEM NAME:

Department of Homeland Security Childcare.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the DHS offices and childcare facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DHS employees, other Federal Employees, and other individuals at Family Childcare (FCC) Homes enrolled in DHS-sponsored childcare programs and eligible children.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Employee's/guardian's name;
- Employee's/guardian's home address;
- Employee's/guardian's home phone;
- Employee's/guardian's financial information to include:
  - Salary information;
  - Family income;
  - Credit card information;
  - Bank information;
- Employee's/guardian's work address;
- Employee's/guardian's work phone;
- Employee's/guardian's email address;
- Emergency contact's name;
- Emergency contact's address;
- Emergency contact's phone;
- Child's name;
- Child's address;
- Child's phone;
- Medical, dental, and insurance provider data;
- Medical history of the child including records of immunizations, allergies, and current medications;
- Records of physical, emotional, or other special care requirements;
- A picture of the child;
- Correspondence between the childcare facility and the guardian, such as authorization to release the child to another person besides the guardian and field trip permission slips; and
- Records provided by parents/guardians to enhance cultural and social enrichment activities. These records may include family background, cultural, and ethnic data such as religion, native language, and family composition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 515; 40 U.S.C. 590, Childcare Services for Federal Employees; The Federal Records Act, 44 U.S.C. 3101; Executive Order 9373.

PURPOSE(S):

The purpose of this system is to administer DHS-sponsored childcare programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records of information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where the Department of Justice or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To provide to Federal, State, or local governments and agencies to report medical conditions and other data required by law; in order to aid in preventive health and communicable disease control problems.

I. To the Department of Agriculture for use in determining eligibility to participate in the Childcare Food Program.

J. To appropriate State and local governmental agencies as well as non-profit organizations to determine eligibility for State and local or non-profit childcare subsidies.

K. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the

integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by the employee/guardian's name and by the child's name.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Child's record file is destroyed three years after date of last action. Registration/medical forms may be sent to another facility if a child transfers. Child Care Food Program eligibility records are transferred to an audit file at the end of each year where they are not retrieved by child's name. Records subject to an audit are destroyed after three years or after being audited, whichever is sooner.

SYSTEM MANAGER AND ADDRESS:

For Headquarters components of DHS, the System Manager is the Director of Departmental Disclosure, Department of Homeland Security, Washington, DC 20528. For components of DHS, the System Manager can be found at *http://www.dhs.gov/foia* under ''contacts.''

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters' or component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0550, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Identify which component(s) of the Department you believe may have the information about you,
- Specify when you believe the records would have been created,
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are generated from guardians and child's medical care providers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: September 23, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–23306 Filed 10–2–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2008–N0222; 81440–1112–0000 ABC Code F2]

Endangered and Threatened Wildlife and Plants; Incidental Take Permits in Santa Cruz County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of five Incidental Take Permit applications and Habitat Conservation Plans (HCPs) under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The applicants collectively anticipate removing a total of approximately 2.04 acres of Mount Hermon June beetle (*Polyphylla barbata*) occupied habitat, and one HCP also includes the federally endangered Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*) as a covered species. We are requesting comments on the permit applications and on our preliminary determination that the proposed HCPs qualify as ''low effect'' HCPs, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended.

DATES: Written comments should be received on or before November 3, 2008.

ADDRESSES: Please address written comments to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. You may also send comments by facsimile to (805) 644–3958. To obtain copies of draft documents, see ''Availability of Documents'' under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jen Lechuga, HCP Coordinator (*see* **ADDRESSES**), *telephone:* (805) 644–1766 extension 224.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the applications and HCPs by contacting the HCP Coordinator (*see* **FOR FURTHER**

INFORMATION CONTACT). Documents will also be available for review by appointment, during normal business hours, at the Ventura Fish and Wildlife Office (see **ADDRESSES**), or via the Internet at: *http://www.fws.gov/ventura.*

Background

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and Federal regulations prohibit the ''take'' of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, the Service, under limited circumstances, may issue permits to cover incidental take, i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively. Among other criteria, issuance of such permits must not jeopardize the existence of federally listed fish, wildlife, or plants.

We announce the availability of five Incidental Take Permit (ITP) applications and Habitat Conservation Plans (HCPs) from the following five applicants: Blake Lane LLP, Larry Busch, Jim Sisk, Richard and Carolyn Tinkess, and Ed and Lita West. Blake Lane LLP, Larry Busch, and Jim Sisk each request an ITP for a duration of 5 years; Richard and Carolyn Tinkess and Ed and Lita West each request an ITP for a duration of 3 years, under section 10(a)(1)(B) of the Act. The applicants collectively anticipate removing a total of approximately 2.04 acres of Mount Hermon June beetle (*Polyphylla barbata*) occupied habitat incidental to constructing six condominiums, nine single-family homes, one single-family home relocation, and an addition to an existing single-family home in Santa Cruz County, California (Projects).

The applicants' HCPs describe the mitigation and minimization measures the applicants propose to address the effects of the Projects on the Mount Hermon June beetle. In addition, the Richard and Carolyn Tinkess HCP includes the federally endangered Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*) as a covered species, and their HCP describes mitigation and minimization measures for this species as well.

The Projects are located on soils known as ''Zayante sands.'' These soils support the Zayante sandhills ecosystem that occurs exclusively in the Santa Cruz Mountains near the city of Scotts Valley and the communities of Ben Lomond, Mount Hermon, Felton, Olympia, Corralitos, and Bonny Doon. The Mount Hermon June beetle is restricted to Zayante sands soils in the Scotts Valley-Mount Hermon-Felton-Ben Lomond area and is found in association with vegetation of the Zayante sandhills, which is characterized by a mosaic of ponderosa pines (*Pinus ponderosa*), silverleaf manzanita (*Arctostaphylos silvicola*), and areas that are sparsely vegetated with grasses and herbs.

The five applicants are requesting to remove approximately 2.04 acres of combined Mount Hermon June beetle habitat incidental to construction of the Projects. Residential construction of the six condominiums for Blake Lane LLP would occur within parcel 022–172–47 in Scotts Valley, Santa Cruz County, California. Residential construction of two single-family homes and a single-family home relocation for Mr. and Mrs. Larry Busch would occur within parcel 067–041–24 near the city of Scotts Valley, Santa Cruz County, California. Residential construction of six single-family homes for Jim Sisk would occur within parcels 021–231–09 and 021–071–02 near the city of Scotts Valley in Santa Cruz County, California. Residential construction of one single-family home for Richard and Carolyn Tinkess would occur within parcel 067–411–39 near the city of Scotts Valley in Santa Cruz County, California. Residential construction of a room addition to a single-family home for Ed and Lita West would occur within parcel 072–273–34 in Ben Lomond, Santa Cruz County, California.

The parcels combined encompass about 3.54 acres, and the footprints of the homes, infrastructure, and landscaping would eliminate 2.04 acres of Mount Hermon June beetle habitat. To mitigate for incidental take on the project sites, the applicants propose to purchase a total of 2.33 acres of conservation credits for the Mount Hermon June beetle at the recently approved Ben Lomond Sandhills Preserve of the Zayante Sandhills Conservation Bank operated by PCO, LLC. In addition, the applicants will implement a number of minimization and mitigation measures intended to reduce impacts from the proposed Projects on the Mount Hermon June beetle.

National Environmental Policy Act

We are requesting comments on the permit applications and on our preliminary determination that the proposed Habitat Conservation Plans (HCP) qualify as ''low effect'' HCPs, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*). We explain the basis for this possible determination in draft Environmental Action Statements (EAS) and associated Low Effect Screening Forms. The Applicants' Low Effect HCPs describe the mitigation and minimization measures they would implement, as required in section 10(a)(2)(B) of the Act, to address the effects of the Projects on the Mount Hermon June beetle. The draft HCPs and EASs are available for public review.

We have made a preliminary determination that the HCPs qualify as ''low-effect'' plans as defined by our Habitat Conservation Planning Handbook (November 1996). Our determination that an HCP qualifies as a low-effect plan is based on the following criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to the environmental values or resources that would be considered significant. As more fully explained in our EASs and associated Low Effect Screening Forms, the Applicants' proposals for residential construction qualify as ''low effect'' plans for the following reasons:

(1) Approval of the HCPs would result in minor or negligible effects on the Mount Hermon June beetle and Ben Lomond spineflower and their habitat. The Service does not anticipate significant direct or cumulative effects to the Mount Hermon June beetle or Ben Lomond spineflower resulting from the proposed Projects.

(2) Approval of the HCPs would not have adverse effects on unique geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

(3) Approval of the HCPs would not result in any cumulative or growth-inducing impacts and would not result in significant adverse effects on public health or safety.

(4) The Projects do not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor do they threaten to violate a Federal, State, local, or tribal law or requirement

imposed for the protection of the environment.

(5) Approval of the HCPs would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

The Service, therefore, has made a preliminary determination that approvals of the HCPs qualify as categorical exclusions under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

Public Review and Comment

We will evaluate the permit applications, HCPs, and comments submitted thereon to determine whether the applications meet the requirements of section 10(a) of the Act. If we determine that the applications meet those requirements, we will issue the ITPs for incidental take of the Mount Hermon June beetle. We will also evaluate whether issuance of the section 10(a)(1)(B) ITPs complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in the final analysis to determine whether or not to issue the ITPs.

If you wish to comment on the permit applications, draft Environmental Action Statements or the proposed HCPs, you may submit your comments to the address listed in the **ADDRESSES** section of this document. Our practice is to make comments, including names, home addresses, etc., of respondents available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must provide a rationale demonstrating and documenting that disclosure would constitute a clearly unwarranted invasion of privacy. In the absence of exceptional, documented circumstances, this information will be released. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: September 29, 2008.

Diane K. Noda,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. E8–23403 Filed 10–2–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Big Sandy Casino and Resort Project, Fresno County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) has replaced the National Indian Gaming Commission (NIGC) as lead agency in the preparation of an Environmental Impact Statement (EIS) for a proposed casino and hotel project to be located near Friant, in Fresno County, California. The BIA, with the Big Sandy Rancheria Band of Western Mono Indians (Tribe) as a cooperating agency, intends to gather information necessary for preparing the EIS. The NIGC initiated the public scoping process, including a public scoping meeting on September 15, 2005, to determine the issues, concerns and alternatives to be included in the EIS. The BIA is hereby continuing that process, but as project plans have not changed since the September 15, 2005, meeting, will not be holding additional public scoping meetings.

DATES: Written comments on the scope and implementation of this proposal must arrive by November 4, 2008.

ADDRESSES: You may mail or hand carry written comments to Dale Morris, Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, CA 95825. Please include your name, return address and the caption ''DEIS Scoping Comments, Big Sandy Casino and Resort Project, Fresno County, California,'' on the first page of your written comments.

FOR FURTHER INFORMATION CONTACT: John Rydzik, (916) 978–6051.

SUPPLEMENTARY INFORMATION: The proposed project will be located east of Friant in Fresno County, California, on undeveloped foothill property comprising approximately 48 acres of allotted Indian land currently held in trust by the United States for the beneficial interest of an individual member of the Tribe. The Tribe and the individual Indian allotee have executed and submitted for BIA approval a lease agreement granting use of the property to the Tribe for the development of a casino, resort hotel, and supporting facilities. The BIA's proposed federal action is the approval of this lease agreement.

The Big Sandy Rancheria is a federally recognized Indian Tribe with a land base near Auberry, California. The Tribe has approximately 450 members and is governed by a Tribal Council consisting of five members, under a federally approved constitution. The Big Sandy Rancheria currently has a federally approved tribal-state gaming compact with the State of California.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone 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.

Authority

This notice is published in accordance with sections 1501.7 and 1506.6 of the Council of Environmental Quality regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: May 2, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

Editorial Note: This document was received in the Office of the Federal Register on September 30, 2008.

[FR Doc. E8–23448 Filed 10–2–08; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–1990; 08–08807; TAS: 14X1109]

Notice of Availability of Final Cortez Hills Expansion Project Environmental Impact Statement, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*), the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (FEIS) for the Cortez Gold Mines (CGM) proposed Cortez Hills Expansion Project (project) and by this Notice is announcing its availability.

DATES: The BLM will not issue a Record of Decision (ROD) on the proposal for a minimum of 30 days following the Environmental Protection Agency's publication of a Notice of Availability (NOA) of this document in the **Federal Register**.

ADDRESSES: Copies of the Cortez Hills Expansion Project Final EIS are available in the BLM Battle Mountain District Office, 50 Bastian Road, Battle Mountain, Nevada, during regular business hours of 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Copies are also available via the Internet at *www.blm.gov/nvst/en/fo//battle_mountain_field.html.* Electronic (on CD–ROM) or paper copies are also available.

FOR FURTHER INFORMATION CONTACT: Stephen Drummond, BLM Battle Mountain District Office at (775) 635–4000.

SUPPLEMENTARY INFORMATION: CGM, on behalf of the Cortez Joint Venture, proposes to expand its Pipeline/South Pipeline Project, an existing open-pit gold mining and processing operation. The Pipeline/South Pipeline Project is located in north-central Nevada approximately 31 miles south of Beowawe in Lander County.

The proposed project is located in Lander and Eureka counties:

Mount Diablo Meridian, Nevada

T. 27 N., R. 48 E.;
T. 27 N., R. 47 E.;
T. 27 N., R. 46 E.;
T. 26 N., R. 47 E.;
T. 26 N., R. 48 E.;
T. 28 N., R. 46 E.;
T. 28 N., R. 47 E.

The proposed project would require new surface disturbance of approximately 6,633 acres, including 6,412 acres of public land administered by the BLM Battle Mountain District and 221 acres of private land owned by CGM. Existing CGM mining and processing facilities are located in three main areas in the Cortez Gold Mines Operations Area. These areas are referred to as the Pipeline Complex, Cortez Complex, and Gold Acres Complex. The proposed project would include development of new mining facilities in the proposed Cortez Hills Complex, including development of a new open pit, underground mining, three new waste rock facilities, new heap leach pad, construction of a 12-mile conveyor system and modification or construction of related roads and ancillary facilities. The proposed project also would include continued use of existing facilities in the Pipeline Complex, Cortez Complex, and Gold Acres Complex, as well as expansion of existing facilities (pits and waste rock facilities) in the Pipeline Complex and Cortez Complex. The life of the mine would include approximately 10 years of active mining and concurrent reclamation as areas become available, as well as an additional three years for on-going ore processing, final reclamation, and closure.

A range of alternatives was developed and analyzed in the Draft and Final EIS to address the concerns and issues that were identified. These include alternate waste rock facility and heap leach pad locations, underground mining only, revised pit design, and the No Action Alternative. The rationale for alternatives considered but eliminated from detailed analysis also is discussed. Mitigation measures have been identified, as needed, to minimize potential environmental impacts and to assure that the proposed project would not result in undue or unnecessary degradation of public lands. In addition, the Final EIS includes an analysis of cumulative impacts, including a comprehensive evaluation of potential impacts to Native American cultural values.

A Notice of Intent (NOI) to prepare an EIS was published in the **Federal Register** on December 2, 2005. Two public scoping meetings were held in 2005 in Crescent Valley and Battle Mountain. The Draft EIS was released for public review, with a 60-day comment period, on October 7, 2007. Following release of the Draft EIS, two public comment meetings were held in Crescent Valley and Battle Mountain in November 2007 to solicit additional comments on the document. Comment responses and resultant changes in the impact analyses are documented in the Final EIS.

Based on the results of the analysis of the Proposed Action for the Draft EIS and in response to public comments, CGM developed the Revised Cortez Hills Pit Design Alternative, which the BLM evaluated as an alternative to the Proposed Action in the Final EIS. This alternative was developed to address long-term stability issues identified for the east wall of the proposed Cortez Hills Pit. The revised Cortez Hills Pit design includes a flatter east pit wall and associated reduction in the size of the open pit, expansion of the underground mining component, and an associated reduction in the size of the Canyon, North, and South waste rock facilities. The Revised Cortez Hills Pit Design Alternative lies within the spectrum of alternatives analyzed in the Draft EIS, and is a minor variation of an alternative analyzed.

Authority: 40 CFR 1506.6.

Gerald M. Smith,

District Manager, Battle Mountain.

[FR Doc. E8–23251 Filed 10–2–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–FB; NMNM 120291]

Recreation and Public Purpose (R&PP) Act Classification; Doña Ana County, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has determined that land located in Doña Ana County, New Mexico is suitable for classification for lease and/or conveyance to New Mexico State University (NMSU) under authority of the Recreation and Public Purposes Act (R&PP), as amended (43 U.S.C. 869 et seq.). NMSU proposes to use the land as a new satellite campus for the Doña Ana Community College.

DATES: Comments must be received by no later than November 17, 2008.

ADDRESSES: Written comments concerning this Notice should be addressed to: District Manager, BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Al Chavez, Realty Specialist at the address above or by telephone at (575) 525–4350.

SUPPLEMENTARY INFORMATION: In accordance with section 7 of the Taylor Grazing Act, as amended, 43 U.S.C.

315f, the following described land has been examined and found suitable for classification as a non-profit, public purpose—specifically, a site for a new satellite campus of the NMSU Doña Ana Community College. The land is hereby classified accordingly. The parcel of public land is described as follows:

New Mexico Principal Meridian

T. 26 S., R. 5 E.,
Sec. 13, S½SW¼NE¼.

The area described contains 19.967 acres, more or less in Doña Ana County.

NMSU proposes to develop the land to construct a new satellite campus to meet the educational needs of the rapidly growing community. The site would be leased for a period of 5 years with the option to purchase after the sites are developed according to NMSU. Conveying title to the affected public land is consistent with current BLM land use planning.

The lease or conveyance, when issued, would be subject to the following terms, conditions, and reservations.

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

3. The United States will reserve all minerals together with the right to prospect for, mine, and remove the minerals.

4. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

5. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal land and interests therein.

Additional detailed information concerning this Notice of Realty Action, including environmental documents, is available for review at the address above. On October 3, 2008, the lands described above will be segregated from all other forms of appropriation under the public land laws, including the mining and mineral leasing laws, except for lease or conveyance under the R&PP Act. On or before November 17, 2008, comments may be submitted regarding the proposed classification lease or conveyance of the land to the District Manager, BLM Las Cruces District Office, at the address above.

Only written comments will be accepted. 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.

Classification Comments: Interested parties may submit comments involving the suitability of the land for the proposed satellite campus. Comments on the classification is restricted to whether the land is physically suited for the proposal, where the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Additional Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a satellite campus. The State Director will review any adverse comments. In the absence of adverse comment, the classification will become effective on December 2, 2008. The land will not be offered for lease or conveyance until after the classification becomes effective.

(Authority: 43 CFR 2741.5)

Bill Childress,

District Manager, Las Cruces.

[FR Doc. E8–23431 Filed 10–2–08; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–160–1430–EQ; COC–73222]

Notice of Realty FLPMA Section 302 Permit/Lease, Gunnison County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: Gunnison Aggregate Resources has submitted a proposal for a land use authorization to operate an asphalt batch plant and other materials processing and temporary storage pursuant to Section 302 of the Federal Land Policy and Management Act of 1976 and regulations at Title 43 CFR 2920. The land consists of approximately 1.25 acres of public lands approximately 5 miles southwest of Gunnison in Gunnison County, Colorado, within a portion of the SW¼SW¼SE¼ of Section 17, T.49N., R.1W., New Mexico Principal Meridian. The land is within a 50-acre parcel of public land designated as the McCabe Lane community gravel pit. The proponent is a permit holder authorized to extract gravel from the McCabe Lane pit.

DATES: Interested parties may submit comments concerning the proposed permit/lease until November 17, 2008. Only written comments will be accepted.

ADDRESSES: Address all written comments concerning this notice to the Field Manager, BLM Gunnison Field Office, 216 N. Colorado St., Gunnison, Colorado 81230.

FOR FURTHER INFORMATION CONTACT: Marnie Medina, Realty Specialist, at the above address, or call (970) 642–4457.

SUPPLEMENTARY INFORMATION: This is a notice of a proposal for a land use authorization. No additional proposals will be accepted. After review, the BLM has determined that the proposed use is in conformance with the Gunnison Resource Area Resource Management Plan, and that the above described land is available for that use. Therefore, pursuant to section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)) and the implementing regulations at Title 43 CFR 2920, the BLM will accept for processing an application to be filed by Gunnison Aggregate Resources, or its duly qualified designee, for a noncompetitive permit/lease of the above described lands, to be used, occupied, and developed as stated above. It is the judgment of the authorized officer that, as provided for in 43 CFR 2920.5–4(b), no competitive interest exists, or competitive bidding would represent unfair competitive and economic disadvantage to the originator of the unique land use concept that is compatible with the public interest. The rental for the noncompetitive permit/lease shall not be less than fair market value.

The BLM will estimate the costs of processing the permit/lease application. Before the BLM begins to process the application, the applicant must pay the full amount of the estimated costs to the United States. If a lease is not granted, the applicant must pay to the United States, in addition to the estimated costs, the reasonable costs incurred by the BLM in processing the application in excess of the estimated costs. Rent, payable annually or otherwise in advance, will be determined by the BLM, if and when a lease application is

granted and periodically thereafter. If a permit or lease is granted, the permittee/lessee shall reimburse the United States for all reasonable administrative and other costs incurred by the United States in processing the application and for monitoring construction, operation, maintenance and rehabilitation of the land and facilities authorized. The reimbursement of costs shall be in accordance with the provisions of 43 CFR 2920.6.

The permit/lease application must include a reference to this notice and comply in all respects with the regulations pertaining to land use authorization applications at 43 CFR 2920.5–2 and 2920.5–5(b). If authorized, the permit/lease would be subject to valid existing rights.

Comments must be received by the BLM Gunnison Field Manager, at the above address, on or before the date stated above. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so. Any adverse comments will be reviewed by the BLM Gunnison Field Manager, who may sustain, vacate, or modify this realty action. In the absence of any objections or adverse comments, this proposed realty action will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2920.4)

Kenny McDaniel,

Field Manager, Gunnison.

[FR Doc. E8–23440 Filed 10–2–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Gulf of Mexico (GOM), Outer Continental Shelf (OCS), Central Planning Area (CPA) and Western Planning Area (WPA), Oil and Gas Lease Sales for Years 2009–2012

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Availability (NOA) of the Final Supplemental Environmental Impact Statement (SEIS).

SUMMARY: The MMS has prepared a SEIS on oil and gas lease sales tentatively scheduled in 2009–2012 in the CPA and WPA offshore the States of Texas, Louisiana, Mississippi, and Alabama. As mandated in the Gulf of Mexico Energy Security Act of 2006 (GOMESA) (Pub. L. 109–432, December 20, 2006), MMS shall offer, as soon as practicable, approximately 5.8 million acres located in the southeastern part of the CPA (''181 South Area''). The CPA Sale 208 (March 2009) will be the first sale to include the ''181 South Area.'' The SEIS analyzed newly available information for the potential environmental effects of oil and natural gas leasing, exploration, development, and production in the ''181 South Area.''

Authority: This NOA is published pursuant to the regulations (40 CFR 1503) implementing the provisions of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.* (1988)).

SUPPLEMENTARY INFORMATION: As mandated in GOMESA, MMS shall offer the ''181 South Area'' for oil and gas leasing pursuant to the OCS Lands Act (43 U.S.C. 1331 *et seq.*). In March 2009, proposed Lease Sale 208 would be the first CPA sale to offer the ''181 South Area.'' The SEIS supplements the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2007–2012; Western Planning Area Sales 204, 207, 210, 215, and 218; Central Planning Area Sales 205, 206, 208, 213, 216, and 222, Final Environmental Impact Statement* (OCS EIS/EA MMS 2007–018, Multisale EIS). The Multisale EIS did not analyze the ''181 South Area''; therefore, MMS has prepared a SEIS to address the addition of the ''181 South Area'' to the proposed CPA sale area. Also, an extensive search was conducted for new information published since completion of the Multisale EIS, including various Internet sources, scientific journals, interviews with personnel from academic institutions, and Federal, State, and local agencies.

Based on new information and the expanded CPA sale area, MMS has reexamined potential impacts of routine activities and accidental events associated with the proposed CPA and WPA lease sales, and a proposed lease sale's incremental contribution to the cumulative impacts on environmental and socioeconomic resources. Like the Multisale EIS, the resource estimates and scenario information for the SEIS analyses are presented as a range that would encompass the resources and activities estimated for any of the seven proposed lease sales.

Final SEIS Availability: To obtain a single, printed or CD–ROM copy of the final SEIS, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). An electronic copy of the Final EIS is available at the MMS's Internet Web site at *http://www.gomr.mms.gov/homepg/regulate/environ/nepa/nepaprocess.html.* Several libraries along the Gulf Coast have been sent copies of the SEIS. To find out which libraries, and their locations, have copies of the SEIS for review, you may contact the MMS's Public Information Office or visit the MMS Internet Web site at *http://www.gomr.mms.gov/homepg/regulate/environ/libraries.html.*

FOR FURTHER INFORMATION CONTACT: For more information on the SEIS or the public hearings, you may contact Dennis Chew, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard (MS 5412), New Orleans, Louisiana 70123–2394, or by e-mail at *environment@mms.gov*. You may also contact Mr. Chew by telephone at (504) 736–2793.

Dated: September 25, 2008.

Chris Oynes,

Associate Director for Offshore Minerals Management.

[FR Doc. E8–23372 Filed 10–2–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Availability of the Proposed Notice of Sale for Outer Continental Shelf (OCS) Oil and Gas Lease Sale 208 in the Central Planning Area (CPA) in the Gulf of Mexico

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Availability of the Proposed Notice of Sale for Proposed Sale 208.

SUMMARY: The MMS announces the availability of the proposed Notice of Sale for proposed Sale 208 in the CPA. This Notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected States the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

DATES: Comments on the size, timing, or location of proposed Sale 208 are due from the affected States within 60 days

following their receipt of the proposed Notice. The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for March 18, 2009.

SUPPLEMENTARY INFORMATION: The proposed Notice of Sale for Sale 208 and a ''Proposed Notice of Sale Package'' containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

Dated: September 26, 2008.

Randall B. Luthi,

Director, Minerals Management Service.

[FR Doc. E8–23369 Filed 10–2–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Minor Boundary Revision at Joshua Tree National Park

AGENCY: National Park Service, Interior.

ACTION: Notice of boundary revision.

SUMMARY: This notice announces the revision to the boundary of Joshua Tree National Park, pursuant to the authority specified below, to include a 639-acre tract of adjacent land identified as Tract 101–78 located in San Bernardino County, California, and depicted on Drawing No. 156/92,003, Sheet 1 of 1, Segment Map 101, revised February 11, 2008. This map is on file and available for inspection at the following locations: National Park Service, Land Resources Program Center, Pacific West Region, 1111 Jackson St., Suite 700, Oakland, CA 94607 and National Park Service, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: National Park Service, Chief, Pacific Land Resources Program Center, Pacific West Region, 1111 Jackson St., Suite 700, Oakland, CA 94607, (510) 817–1414. 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.

DATES: The effective date of this boundary revision is October 3, 2008.

SUPPLEMENTARY INFORMATION: 16 U.S.C. 460*l*–9(c)(1) provides that after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Resources, the Secretary of the Interior is authorized to make this boundary revision. This action will add one tract containing 639 acres of land to the Mesa Verde National Park. The National Park Service proposes to acquire this parcel by donation from The Mojave Desert Land Trust.

The referenced map is on file and available for inspection at the following locations: National Park Service, Land Resources Program Center, Pacific West Region, 1111 Jackson St., Suite 700, Oakland, CA 94607 and National Park Service, Department of the Interior, Washington, DC 20240.

Dated: March 11, 2008.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

Editorial Note: This document was received in the Office of the Federal Register on September 29, 2008.

[FR Doc. E8–23305 Filed 10–2–08; 8:45 am]

BILLING CODE 4310–EK–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–500]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2008 Review of Additions and Removals

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on September 24, 2008 of a request from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332 (g)), the Commission instituted investigation No. 332–500, *Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2008 Review of Additions and Removals.*

DATES:

October 14, 2008: Deadline for filing requests to appear at the public hearing.

October 15, 2008: Deadline for filing pre-hearing briefs and statements.

October 30, 2008: Public hearing.

November 5, 2008: Deadline for filing post-hearing briefs and statements and other written submissions.

December 19, 2008: Transmittal of report to USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ONLINE) at *http://www.usitc.gov/secretary/edis.htm*.

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Cynthia B. Foreso, Project Leader, Office of Industries (202–205–3348 or *cynthia.foreso@usitc.gov*) or Eric Land, Deputy Project Leader, Office of Industries (202–205–3349 or *eric.land@usitc.gov*). For more information on legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). 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.

Background: As requested by the USTR, in accordance with sections 503(a)(1)(A), 503(e), and 131(a) of the Trade Act of 1974, as amended (19 U.S.C. 2463(a)(1)(A), 19 U.S.C. 2463(e), and 19 U.S.C. 2151(a)), and pursuant to the authority of the President delegated to the United States Trade Representative by sections 4(c) and 8(c) and (d) of Executive Order 11846 of March 31, 1975, as amended, and pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission will provide advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties for all beneficiary developing countries under the GSP program on articles provided for in HTS subheadings 0710.10.00, 0710.30.00, 0710.40.00, 0710.80.97.22, 0710.80.97.24, 0710.80.97.26, 2008.92.90.40, 2009.41.20, 2009.49.20, 3901.20.10, and 4412.39.50.30. Also, as requested by

USTR, pursuant to section 332(g) of the Tariff Act of 1930, the Commission will provide advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the removal from eligibility for duty-free treatment under the GSP program of articles provided for in HTS subheadings 3907.60.00 from India, 3907.60.00 from Indonesia, and 3908.10.00 from Thailand. The Commission expects to provide its advice by December 19, 2008. The USTR indicated that those sections of the Commission's report and related working papers that contain the Commission's advice and model inputs and results will be classified as ''confidential.''

Public Hearing: A public hearing in connection with this investigation will be held beginning at 9:30 a.m. on October 30, 2008 at the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All persons have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) on October 14, 2008, in accordance with the requirements in the ''Written Submissions'' section below.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements or briefs concerning these investigations. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary. Pre-hearing briefs and statements should be filed not later than 5:15 p.m., October 15, 2008; and post-hearing briefs and statements and all other written submissions should be filed not later than 5:15 p.m., November 5, 2008. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR.

As requested by the USTR, the Commission will publish a public version of the report, which will exclude portions of the report that the USTR has classified as confidential as well as any confidential business information.

By order of the Commission.

Issued: September 29, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–23321 Filed 10–2–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos.701–TA–451; 731–TA–1126–1127 (Final)]

In the Matter of: Lightweight Thermal Paper From China and Germany 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 Papierfabrik August Koehler AG, Koehler America, Inc., Mitsubishi HiTec Paper Flensburg GmbH, Mitsubishi HiTec Paper Bielefeld GmbH, and Mitsubishi International Corp. (''German Respondents''), the Commission has determined to conduct a portion of its hearing in the above-captioned investigations scheduled for October 2, 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: Marc A. Bernstein, Office of General Counsel, United States International Trade Commission, 202–205–3087. 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 German Respondents have justified the need for a closed session to discuss pricing data, trade and financial data pertaining to the domestic industry, and business plans of domestic producers that contain business proprietary information (BPI). 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 parties supporting imposition of duties and respondents, with questions from the Commission. In addition, the hearing will include a ten-minute *in camera* session for a confidential presentation by German Respondents. This session will be followed by questions from the Commission relating to the BPI and a ten-minute *in camera* rebuttal presentation by parties supporting imposition of duties, 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 *Lightweight Thermal Paper from China and Germany,* Inv. Nos. 701–TA–451, 731–TA–1126–27 (Final), may be closed to the public to prevent the disclosure of BPI.

By order of the Commission.

Issued: September 29, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–23323 Filed 10–2–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–574]

In the Matter of Certain Equipment for Telecommunications or Data Communications Networks, Including Routers, Switches, and Hubs, and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation Based on a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 52) of the presiding administrative law judge (''ALJ'') granting a joint motion for termination of the above-captioned investigation based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 16, 2006, based on a complaint filed on May 15, 2006, by Telcordia Technologies, Inc. (''Telcordia'') of Piscataway, New Jersey. An amended complaint was filed on June 5, 2006. The complaint as amended alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain equipment for telecommunications or data communications networks, including routers, switches, hubs, and components thereof, by reason of infringement of claims 1, 3, and 4 of U.S. Patent No. 4,893,306 (''the '306 patent''); claims 1, 3, 5, 8, 11, and 33 of U.S. Patent No. Re. 36,633 (''the '633 patent''); and claims 1, 2, 7, and 8 of U.S. Patent No. 4,835,763 (''the '763 patent''). The amended complaint named five respondents: Cisco Systems, Inc. (''Cisco'') of San Jose, California; Lucent Technologies, Inc. (''Lucent'') of Murray Hill, New Jersey; Alcatel S.A. of France and Alcatel USA, Inc. of Plano, Texas (collectively ''Alcatel''); and PMC-Sierra, Inc. (''PMC-Sierra'') of Santa Clara, California. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

On August 23, 2006, the Commission issued notice of its determination not to review an ID terminating the investigation as to the '306 patent and certain claims of the '633 patent. On January 4, 2007, the Commission issued notice of its determination not to review an ID terminating the investigation as to the '763 patent. On June 15, 2007, the Commission issued notice of its determination not to review an ID terminating the investigation as to respondents Alcatel and Lucent on the basis of a settlement agreement. On August 8, 2008, the Commission issued notice of its determination not to review an ID terminating the investigation as to respondent PMC-Sierra. On September 17, 2008, the Commission issued notice of its determination not to review an ID granting Telecordia's motion for summary determination that respondent Cisco is precluded from litigating certain issues in view of a previous judgment in a case involving the same issues and the same parties in the U.S. District Court for the District of Delaware.

On August 29, 2008, Telecordia and Cisco filed a joint motion for termination of the investigation, based on a settlement agreement. The ALJ issued the subject ID on September 8, 2008, granting the joint motion. No petitions for review of the ID were filed. The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21(a)(2), (b), and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.21(a)(1), (b), 210.42(h).

By order of the Commission.

Issued: September 29, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–23320 Filed 10–2–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–571]

In the Matter of Certain L-Lysine Feed Products, Their Methods of Production and Genetic Constructs for Production; Notice of Commission Determination (1) To Review and Not Take a Position on Certain Issues in the Final Initial Determination of the Administrative Law Judge and (2) Not To Review the Remainder of the Final Initial Determination; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined (1) to review and not take a position on certain issues in the final initial determination (''ID'') of the presiding administrative law judge (''ALJ'') and (2) not to review the remainder of the ID finding no violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''). This action terminates the investigation.

FOR FURTHER INFORMATION CONTACT: James Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436,

telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On May 31, 2006, the Commission instituted this investigation based upon a complaint filed on behalf of Ajinomoto Heartland LLC (Chicago, Illinois) (''Ajinomoto Heartland''). 71 FR 30958 (May 31, 2006). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain L-lysine feed products and genetic constructs for production thereof by reason of infringement of claims 13, 15–19, and 21–22 of U.S. Patent No. 5,827,698 (''the '698 patent'') and claims 1, 2, 15, and 22 of U.S. Patent No. 6,040, 160 (''the '160 patent'').

The complaint named as respondents Global Bio-Chem Technology, Group Company Ltd. (Admiralty, Hong Kong), Changchun Dacheng Bio-Chem Engineering Development Co., Ltd., (Jilin Province, China), Changchun Baocheng Bio Development Co., Ltd. (Jilin Province, China), Changchun Dahe Bio Technology Development Co., Ltd. (Jilin Province, China), Bio-Chem Technology (HK) Ltd. (Admiralty, Hong Kong) (collectively, ''GBT''). 71 FR 30958. On June 29, 2006, Ajinomoto Heartland further amended the complaint and notice of institution by adding its parent company, Ajinomoto, Inc. (Tokyo, Japan) as a complainant. 71 FR 43209 (July 31, 2006).

On October 15, 2007, the Commission determined not to review an order of the ALJ, granting Ajinomoto's motion to withdraw claims 1, 2, and 22 of the '160 patent and claims 13, 16–19, and 21–22 of the '698 patent.

On July 31, 2008, the ALJ issued his final ID, in which he found no violation of section 337 with regard to either the '160 or the '698 patents because he found that the asserted claims of both patents were invalid for failure to satisfy the best mode requirement of 35 U.S.C. 112 ¶ 1 on two separate grounds and that both patents were unenforceable because of inequitable conduct. He found infringement of the asserted claims through importation of lysine made using the ''old'' strain of E. coli by GBT, but not the ''new'' strain, based upon the stipulation of the parties. The ALJ also found the existence of a domestic industry for the asserted claims, and found that the asserted claims were not invalid for obviousness or obviousness-type double patenting, and that the asserted patents were not unenforceable by reason of unclean hands.

On August 19, 2008, Ajinomoto petitioned for review of the ALJ's final ID regarding invalidity of the asserted claims for failure to meet the best mode requirement and unenforceability of the patents because of inequitable conduct. Neither GBT nor the Commission investigative attorney petitioned for review of any part of the ID.

Having examined the relevant portions of the record in this investigation, including the final ID, the petition for review, and the responses thereto, the Commission has determined (1) to review and take no position on (a) the ALJ's finding that claim 15 of the '160 patent is invalid for failure to meet the best mode requirement to the extent that finding is based on alleged fictitious data and (b) the ALJ's finding that the '160 patent is unenforceable for inequitable conduct and (2) not to review the remainder of the ID. Thus, the investigation is terminated with a finding of no violation of section 337.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.46).

By order of the Commission.
Issued: September 29, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–23324 Filed 10–2–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–571]

In the Matter of Certain L-Lysine Feed Products, Their Methods of Production and Genetic Constructs for Production; Notice of Commission Determination (1) To Review and Not Take a Position on Certain Issues in the Final Initial Determination of the Administrative Law Judge and (2) Not To Review the Remainder of the Final Initial Determination; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined (1) to review and not take a position on certain issues in the final initial determination (''ID'') of the presiding administrative law judge (''ALJ'') and (2) not to review the remainder of the ID finding no violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''). This action terminates the investigation.

FOR FURTHER INFORMATION CONTACT: James Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

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sale for importation, and the sale within the United States after importation of certain L-lysine feed products and genetic constructs for production thereof by reason of infringement of claims 13, 15–19, and 21–22 of U.S. Patent No. 5,827,698 (''the '698 patent'') and claims 1, 2, 15, and 22 of U.S. Patent No. 6,040, 160 (''the '160 patent'').

The complaint named as respondents Global Bio-Chem Technology, Group Company Ltd. (Admiralty, Hong Kong), Changchun Dacheng Bio-Chem Engineering Development Co., Ltd., (Jilin Province, China), Changchun Baocheng Bio Development Co., Ltd. (Jilin Province, China), Changchun Dahe Bio Technology Development Co., Ltd. (Jilin Province, China), Bio-Chem Technology (HK) Ltd. (Admiralty, Hong Kong) (collectively, ''GBT''). 71 *FR* 30958. On June 29, 2006, Ajinomoto Heartland further amended the complaint and notice of institution by adding its parent company, Ajinomoto, Inc. (Tokyo, Japan) as a complainant. 71 *FR* 43209 (July 31, 2006).

On October 15, 2007, the Commission determined not to review an order of the ALJ, granting Ajinomoto's motion to withdraw claims 1, 2, and 22 of the '160 patent and claims 13, 16–19, and 21–22 of the '698 patent.

On July 31, 2008, the ALJ issued his final ID, in which he found no violation of section 337 with regard to either the '160 or the '698 patents because he found that the asserted claims of both patents were invalid for failure to satisfy the best mode requirement of 35 U.S.C. 112 ¶ 1 on two separate grounds and that both patents were unenforceable because of inequitable conduct. He found infringement of the asserted claims through importation of lysine made using the ''old'' strain of E. coli by GBT, but not the ''new'' strain, based upon the stipulation of the parties. The ALJ also found the existence of a domestic industry for the asserted claims, and found that the asserted claims were not invalid for obviousness or obviousness-type double patenting, and that the asserted patents were not unenforceable by reason of unclean hands.

On August 19, 2008, Ajinomoto petitioned for review of the ALJ's final ID regarding invalidity of the asserted claims for failure to meet the best mode requirement and unenforceability of the patents because of inequitable conduct. Neither GBT nor the Commission investigative attorney petitioned for review of any part of the ID.

Having examined the relevant portions of the record in this investigation, including the final ID, the petition for review, and the responses thereto, the Commission has determined (1) to review and take no position on (a) the ALJ's finding that claim 15 of the '160 patent is invalid for failure to meet the best mode requirement to the extent that finding is based on alleged fictitious data and (b) the ALJ's finding that the '160 patent is unenforceable for inequitable conduct and (2) not to review the remainder of the ID. Thus, the investigation is terminated with a finding of no violation of section 337.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.46).

By order of the Commission.

Issued: September 29, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–23377 Filed 10–2–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1123 (Final)]

Steel Wire Garment Hangers From China Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of steel wire garment hangers, provided for in subheading 7326.20.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective July 31, 2007, following receipt of a petition filed with the Commission and Commerce by M&B Metal Products Company, Inc., Leeds, AL. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of steel wire garment hangers from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 4, 2008 (73 FR 18560). The hearing was held in Washington, DC, on July 31, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 29, 2008. The views of the Commission are contained in USITC Publication 4034 (September 2008), entitled *Steel Wire Garment Hangers from China: Investigation No. 731–TA–1123 (Final).*

By order of the Commission.

Issued: September 29, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–23322 Filed 10–2–08; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 5, 2008, a proposed Consent Decree in the case of *United States and the Commonwealth of Pennsylvania Department of Environmental Protection* v. *Temrac Company, Inc.*, Docket No. 08–4292, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this proceeding, the United States filed a claim pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, for reimbursement of costs incurred in connection with response actions taken at the Crossley Farms Superfund Site, located in Huffs Church, Hereford Township, Berks County, Pennsylvania. Pursuant to the Consent Decree, the settling Defendant agrees to pay $1,916,448.77 in reimbursement of costs previously incurred by the United States, and $212,938.93 in reimbursement of costs previously incurred by the Commonwealth of Pennsylvania.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication,

comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov*, or mailed to: P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to: *U.S.* v. *Temrac Company, Inc.*, DJ. Ref. 90–11–2-07484/3.

The Consent Decree may be examined at U.S. EPA Region III, Office of Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103–2029, c/o Gail Wilson, Esq. During the public comment period, the Consent Decree may also be examined at the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost), or $ 6.50 for the Consent Decree and the attached exhibits, payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–23399 Filed 10–2–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket Nos. 05–13 and 05–45]

Sunny Wholesale, Inc.; Revocation of Registration and Denial of Application

On August 24, 2005, I, the Deputy Administrator of the Drug Enforcement Administration, issued an Order to Show Cause and Immediate Suspension of Registration to Sunny Wholesale, Inc. (Respondent), of Forest Park, Georgia. ALJ Ex. 6. The Order immediately suspended Respondent's DEA Certificate of Registration, No. 004550SLY, which authorizes it to distribute the list I chemicals ephedrine and pseudoephedrine, on the ground that it was selling ''excessive amounts'' of these chemicals to convenience stores, *id.* at 6, which are the ''primary source'' for the diversion of these chemicals into the illicit manufacture of methamphetamine, a schedule II controlled substance.[1] *Id.* at 4.

More specifically, the Show Cause Order alleged that in July 2005, DEA Diversion Investigators (DIs) learned that records seized from various north Georgia convenience stores which were ''suspected of illegally distributing listed chemical precursors,'' had ''indicated that [Respondent] had been distributing 60 count bottles of'' Max Brand pseudoephedrine, a product which has been repeatedly found at illicit methamphetamine labs ''in full case and double case lots.'' *Id.* at 6. The Show Cause Order alleged that ''law enforcement officials [in Tennessee and Georgia] have observed that an overwhelming proportion of precursors found at illicit methamphetamine sites has involved non-traditional brands sold through convenience stores,'' *id.* at 4, that DEA had retained an expert in retail marketing and statistics who had concluded that sales of pseudoephedrine products at convenience stores in Tennessee and Georgia ''averaged between $15.00 and $60.00 per month'' per store and that sales of combination ephedrine products were even lower, *Id.* at 5, and that ''[c]onvenience store purchases of case quantities of high count/high strength pseudoephedrine products [are] consistent with diversion of the products into the illicit manufacture of methamphetamine.'' *Id.* at 6. The Show Cause Order further alleged that Respondent had continued selling large amounts of pseudoephedrine ''to convenience stores and gas stations,'' notwithstanding that it had been ''put on notice of the potential illegal character of its activities with the issuance of the original Order to Show Cause'' which was served in October 2004. *Id.* ''[B]ecause of the substantial likelihood that [Respondent would] continue to divert listed chemical products,'' I thus concluded that Respondent's ''continued registration, during the pendency of these proceedings, would constitute an immediate danger to the public health and safety.'' *Id.* at 7.[2]

In addition to the above, the Show Cause Order alleged that during a July 2001 inspection, DEA DIs audited Respondent's handling of listed chemical products and determined that it had ''various overages and shortages, including an unexplained shortage of approximately 10,000 bottles of Max Brand, and (another non-traditional brand) *Heads Up* 60 count bottles.'' *Id.* at 5. The Show Cause Order alleged that while inventorying Respondent's listed chemical products, it had ''no traditional brand * * * products but only 'grey market' brands of pseudoephedrine and combination ephedrine products'' which are not sold at drug stores or supermarkets, but ''are typically only sold in locations where goods of these types are not expected to be sold, such as liquor stores, head shops, gas stations, and other small retail stores.'' *Id.*

The Show Cause Order further alleged that following the inspection, DEA DIs conducted verifications of Respondent's customers; the DIs allegedly found that some of the locations were ''non-existent,'' some were residences, and others included such establishments as ''liquor stores, gift shops, a Blimpie restaurant * * * and a magazine store.'' *Id.* Relatedly, the Order alleged that in seeking a registration for its Decatur location, Respondent provided a list of its proposed list I chemical customers which included ''liquor stores, a lotto store, a clothing store, a newsstand, and another distributor.'' *Id.* at 3.

The Show Cause Order also alleged that Respondent would not maintain proper security of listed chemical products at its new proposed location because while its owner, Mr. Shaukat Sayani, had represented that his customers would place their orders ''in person'' and that Respondent would deliver the products by van, the DIs had previously determined that Respondent did not conduct business in this ''manner at [its] Forest Park'' location. *Id.* The Show Cause Order further alleged that Respondent ''intended to co-mingle listed chemical products with

[1] On October 20, 2004, the Deputy Assistant Administrator issued the initial Order to Show Cause to Respondent; the Order proposed the revocation of its registration at its Forest Park location and the denial of its pending application for a registration at its Decatur, Georgia location. ALJ Ex. 1. Each of the allegations of the initial Show Cause Order was repeated verbatim in the subsequent Order to Show Cause and Immediate Suspension of Registration. On November 19, 2004, Respondent, through its counsel, requested a hearing on the allegations of the first Show Cause Order. ALJ Ex. 2.

[2] The Order also alleged that in July 2005, DEA DIs discovered that Respondent ''was also selling one-ounce bottles of liquid iodine to several convenience stores,'' another chemical used in the illicit manufacture of methamphetamine. Show Cause Order at 6. The Order further alleged that ''[i]odine * * * has miniscule sales for use as an antiseptic, even in pharmacies,'' that ''[t]he likelihood of sales of iodine to customers in convenience stores approaches zero,'' and that while Respondent ''sold between 48 and as many as 240 bottles of iodine to individual convenience stores,'' it ''never reported these transactions * * * as extraordinary sales or suspicious transactions.'' *Id.*

non-regulated products on the warehouse floor,'' that it ''had no procedure in place to detect theft or loss at the warehouse,'' that its ''proposed method of sales recordkeeping * * * was inadequate to comply with 21 CFR 1310.06,'' and that it had no means of ''compar[ing] sales between its two * * * locations in order to determine if excessive or suspicious transactions were being encountered.'' *Id.* Relatedly, the Show Cause Order alleged that warehouse security at the Forest Park location was inadequate. *Id.* at 5.

On September 13, 2005, Respondent requested a hearing on the allegations of the Order to Show Cause and Immediate Suspension and moved to consolidate the two proceedings. ALJ Ex. 7. While the hearing on the original Show Cause Order had been scheduled to begin on September 20, 2005, Respondent's counsel sought a continuance to obtain additional time to prepare. Accordingly, the ALJ ordered that the original hearing be cancelled. On December 14, 2005, the ALJ conducted a pre-hearing conference and set the hearing for March 21, 2006. ALJ Decision (ALJ) at 2–3.

Thereafter, on February 27, 2006, Respondent's counsel filed an emergency motion for a continuance. The ALJ granted the motion and subsequently rescheduled the hearing to begin on August 15, 2006. *Id.* at 3.

A hearing was held on August 15 through 18, 2006, at which both parties called witnesses to testify and submitted documentary evidence. At the hearing, Respondent also submitted a motion for summary judgment. *Id.* (citing RX 26). Following the hearing, both parties submitted briefs containing their proposed findings of fact, conclusions of law, and argument.

On May 4, 2007, the ALJ ordered the parties to file a joint status report regarding Respondent's Forest Park registration. On June 11, 2007, the parties filed the report; the report stated that ''it is the position of the agency and Respondent that [it] currently has a pending application for renewal of its currently suspended registration.'' Joint Status Report at 2.

On August 17, 2007, the ALJ issued her recommended decision. In her decision, the ALJ concluded that Respondent did not maintain effective controls against diversion because it did not ''verify the legitimacy of its customers,'' sold ''suspiciously high quantities of iodine products to some customers'' even though its owner ''was repeatedly made aware of iodine's role as a methamphetamine precursor,'' had ''inadequate inventory procedures [and] poor recordkeeping,'' and failed ''to report suspicious transactions.'' *Id.* at 29–30.

The ALJ also concluded that Respondent was not in compliance with federal law because it ''could not account for large quantities of missing bottles of product,'' and ''did not keep adequate records'' of its sales which ''hindered [its] ability to ascertain whether a customer had purchased an amount above the regulated threshold.'' *Id.* at 31. The ALJ further found that ''Respondent has distributed large, case quantities of pseudoephedrine and ephedrine products,'' as well as ''large amounts of 2% iodine,'' and that ''even [its] witness concurred that some of [its] sales were in excess of what would be expected.'' *Id.* at 32–33. Finally, the ALJ noted that ''[m]any of the 'businesses' to which Respondent sold list I chemical products operated within the * * * non-traditional market for such products,'' that sales to the non-traditional market create an ''unacceptable risk of diversion,'' and that ''[s]ome of [Respondent's customers] did not even appear to be tangentially related to the legitimate sale of pseudoephedrine and ephedrine products.'' *Id.* at 34.

The ALJ did note that Respondent had improved its security and had ''conduct[ed] some investigations into some of its customers' business identities.'' *Id.* at 34. The ALJ concluded, however, that Respondent's ''cooperation is dwarfed by the significant risk of diversion posed [by its] continued sales of listed chemical products to [non-traditional] customers without adequate sales records or customer verification,'' and that it ''has not provided sufficient evidence * * * that its future conduct would change to the degree necessary to eliminate the threat to the public interest.'' *Id.* at 35.

The ALJ further rejected Respondent's arguments that the Government was denying it equal protection of the laws under the Due Process Clause of the Fifth Amendment. More specifically, Respondent argued that it was being held '' 'to a different standard than [the Government's] published rules dictate,' '' *id.* (quoting Resp. Br. at 16), that the Agency had not ''put Respondent on notice as to what specific action would be a violation [of its] rules and regulations,'' *id.* (quoting Resp. Br. at 17), and that ''the agency [was] 'exercising uncontrolled discretion.' '' *Id.* (quoting Resp. Br. at 20).

Finally, the ALJ rejected Respondent's contention that it was entitled to judgment as a matter of law because its sales did not exceed the 1,000 gram monthly threshold (which triggers various reporting and recordkeeping) requirements. *Id.* at 37. Citing several DEA decisions, the ALJ explained that ''Respondent need not exceed the Government's threshold of allowed sales in order to [be deemed to have] act[ed] in a manner inconsistent with the public interest.'' *Id.* (citations omitted).[3]

While the ALJ did not make an express finding that Respondent's continued registration is inconsistent with the public interest, such a finding is implicit in her recommended sanction that Respondent's registration at its Forest Park location should be revoked and its pending application for a registration at its Decatur location should be denied. ALJ at 38. Thereafter, both parties filed exceptions to the ALJ's decision.

The Government's exception noted that while it concurred with the ALJ's recommendation, it was ''not apparent whether the ALJ actually made a finding that Respondent's continued registration would not be in the public interest.'' Gov. Exceptions at 1. The Government thus requested that I ''make a finding that Respondent's continued registration and pending application for registration are not in the public interest as that term is used'' in the applicable provisions of the Controlled Substances Act. *Id.*

The Government also took exception to three of the ALJ's factual findings (FOFs 52, 57, 58), pertaining to the testimony of the Government's expert on the expected sale range of listed chemical products at convenience stores and other non-traditional retailers of these products. *Id.* at 2. More specifically, the Government took exception to the ALJ's findings that Respondent's expert had credibly testified that the Government's expert had made several ''flawed assumptions'' including ''that everybody sells everything in'' the product category, and that as a result, ''the average convenience store might sell $173.25 of list I chemical products per month,'' and that ''this number [is] more credible than the $82 value'' given by the Government's expert.[4] ALJ at 23–24; Gov. Exceptions at 2.

Because ''Respondent sold in excess of both experts' figures,'' the Government declined to ''opine'' as to

[3] The ALJ also noted that there was no evidence that supported Respondent's contention that it is being discriminated against because its owner ''is a legal alien who is attempting to operate a business in this country in accordance with its laws.'' ALJ at 37 (quoting Res. Br. 24).

[4] The ALJ noted, however, that ''even using this larger number * * *. Respondent repeatedly sold list I chemical products in excess of $173.25 per month.'' ALJ at 24.

whose expert's sales figures were ''exactly correct'' or whether ''there is a more precise figure somewhere between their numbers.'' Gov. Exceptions at 2–3. The Government nonetheless urged that I not adopt the ALJ's finding because Respondent's expert's ''analysis of this case was not in detail, but quite limited,'' and the expert ''did not perform his own independent analysis of the data, but only compared end data from two different parts of [the Government expert's] report.'' *Id.* at 3.

In its exceptions, Respondent also noted that the ALJ had not made a finding as to whether its continued registration would be in the public interest and argued that ''no such ruling would be appropriate in this matter.'' Resp. Exceptions at 2. More specifically, Respondent contends that it has ''complied with every request that was given to it by the DEA, repeatedly requested of DEA what they wanted it to do and was willing to do anything the DEA wanted.'' *Id.* at 3. It further contends that the Show Cause Orders were based on Respondent's exceeding sales levels, but that the Government's evidence on the expected sales was ''not credible,'' and that therefore, the Government has not carried its burden of showing that its registration would be inconsistent with the public interest. *Id.* at 4.

Respondent also takes exception to the ALJ's finding that it has ''inadequate inventory procedures.'' *Id.* at 4 (citing ALJ at 30). More specifically, Respondent contends that ''there is no requirement under any of the DEA rules to have an inventory system, and [that it] is once again being asked to comply with something that is not in the DEA rules.'' *Id.* at 5. Respondent thus contends that it is ''being held to [a] previously unspecified and unpublished * * * guideline[ ],'' and that in doing so, the Agency is violating its constitutional rights to due process and equal protection. *Id.* at 5. Finally, Respondent contends that the ALJ ''ignore[d] the substantial remedial actions that [it] had taken to correct problems of which the DEA had notified it.'' *Id.*

Thereafter, the record was forwarded to me for final agency action. Having considered the record as a whole, as well as the exceptions of both parties, I adopt the ALJ findings of fact except as expressly noted herein. I further conclude that the Government has made out a *prima facie* case that Respondent's registration would be inconsistent with the public interest and that Respondent has failed to present sufficient evidence to establish that it will maintain effective controls against diversion in the future. I also reject Respondent's constitutional claims and its motion for judgment as a matter of law. I therefore also adopt the ALJ's recommended sanction that Respondent's Forest Park registration be revoked and its applications for renewal of the latter registration and for a registration at its Decatur location be denied. I make the following findings.

Findings

Respondent is a corporation which engages in the wholesale distribution of assorted products to gas stations, convenience stores, dollar stores, beauty stores, and other establishments. Tr. 701. Respondent is owned by Mr. Sunny Sayani, *id.*, and operates two warehouses which are located in Forest Park and Decatur, Georgia. *Id.* at 702. According to the record, Respondent operates ''a cash and carry'' business in which its customers come to the warehouse to purchase the products they need. RX 25a, Tr. 731.[5]

Respondent currently holds DEA Certificate of Registration, # 004550SLY, which authorizes it to distribute the list I chemicals ephedrine and pseudoephedrine out of its Forest Park warehouse. Tr. 245; GX 1. While Respondent's registration expired on February 28, 2005, it filed a renewal application and paid the requisite fee at some point in January 2005. See Joint Status Report at 1–2. Accordingly, Respondent has a registration, albeit one that has been suspended, at its Forest Park location.

Methamphetamine and the Market for List I Chemicals

Both pseudoephedrine and ephedrine have therapeutic uses and are lawfully marketed as non-prescription (OTC) drug products under the Federal Food, Drug and Cosmetic Act. GX 15, at 3. Pseudoephedrine is approved for marketing as a decongestant; ephedrine (in combination with guaifenesin) is approved for marketing as a bronchodilator.[6] *Id.* at 4. Both pseudoephedrine and ephedrine are, however, regulated as list I chemicals under the Controlled Substances Act because they are precursor chemicals that are easily extracted from OTC products and used in the illicit manufacture of methamphetamine, a schedule II controlled substance. *See* 21 U.S.C. 802(34); 21 CFR 1308.12(d); GX 15, at 8 (noting that ''the production of methamphetamine from ephedrine or pseudoephedrine can be accomplished via a simple one step reaction and can be accomplished with little or no chemistry expertise'').

Methamphetamine is a highly addictive and abused central-nervous system stimulant. GX 15, at 9. Methamphetamine abuse has destroyed numerous lives and families and ravaged communities. *Id.*; *see also Rick's Picks, L.L.C.*, 72 FR 18275, 18276 (2007). Moreover, because of the toxic nature of the chemicals used to make the drug, its illicit manufacture causes serious environmental harms. *Id.*; GX 14, at 10.

A DEA Special Agent from the Atlanta Field Division testified regarding the rapid growth of illicit manufacturing of methamphetamine during his tenure in Atlanta. Tr. 29. According to the S/A's testimony, over ''a short period of time'' the number of meth. lab seizures by DEA and local law enforcement had ''multiplied by ten times.'' *Id.* Other evidence showed that between 1999 and 2004, the number of seizures in the State of Georgia had increased from 34 to 229.[7] *See* GXs 9 & 35.

The Special Agent, who had debriefed over 200 individuals involved in the illicit manufacture of methamphetamine, Tr. 39, also testified that convenience stores, gas stations, and other small retailers were the primary source of the ephedrine and pseudoephedrine which was used by ''mom-and-pop'' meth. labs. *Id.* at 56 & 59. The Agent further testified that meth. cooks use individuals known as ''runners'' who would travel to different stores and purchase small amounts each day to avoid detection. *Id.* at 62. Moreover, runners generally avoided larger retailers such as chain stores because these establishments have ''too much security'' and ''too much video surveillance,'' *id.* at 56, and have ''been very militant on * * * limit[ing] sales'' of the drugs. *Id.* at 102; *see also id.* at 100.

The S/A also testified that in some instances, meth. cooks recruited multiple persons to go to smaller stores and buy the maximum amount of product the store would sell them. *Id.* at 63. Moreover, in some instances, either the owner or an employee of a smaller

[5] Respondent's owner testified that it delivers, but that the customer must ''buy more than $1000'' to justify the expenses of paying for the driver, gasoline and the truck. Tr. 731.

[6] In July 2005, the Food and Drug Administration issued a notice of proposed rulemaking which proposes to remove combination ephedrine/guaifenesin products from the OTC monograph on the ground that these drugs are not safe and effective for OTC use. 70 FR 40232 (2005).

[7] Between 1999 and 2004, the States adjacent to Georgia also experienced large increases in the number of meth. lab seizures. In Alabama, the number of seizures increased from 27 to 369; in Tennessee, the number increased from 106 to 1251; and in South Carolina, the number increased from 5 to 153. *See* GXs 9 & 35.

store would sell a case quantity of a listed chemical product to a person affiliated with a lab. *Id.*

The Government also established that the overwhelming majority of commerce in non-prescription drug products occurs in drug stores, supermarkets, large discount merchandisers and electronic shopping/mail order houses. GX 25. According to the declaration of Jonathan Robbin,[8] who has testified in numerous DEA and federal court proceedings as an expert witness on the market for list I chemical products containing pseudoephedrine and ephedrine, ''over 97% of all sales of non-prescription drug products occur in drug stores and pharmacies, supermarkets, large discount merchandisers and electronic shopping and mail order houses.'' *Id.* at 4; *see also* GX 24, at 3.[9] According to Mr. Robbin, these retailers ''constitute the traditional marketplace where [nonprescription drugs for coughs, cold, nasal congestion, and asthma] are purchased by ordinary consumers.'' GX 25, at 4.

Mr. Robbin has further concluded that sales of non-prescription drugs at convenience stores ''account for only 2.2% of the overall sales of all convenience stores that handle the line.'' *Id.* Moreover, only 4.87% of convenience store shoppers purchase a non-prescription drug product, GX 24, at 5; and only 4.59% of these shoppers purchase a pseudoephedrine product.[10] *Id.* at 4. Mr. Robbin thus concluded that .21% of convenience store shoppers purchased a pseudoephedrine product. *Id.* at 5. In another document, Mr. Robbin explained that by extrapolating data from the 1997 U.S. Economic Census data and information obtained from surveys of the National Association of Convenience Stores, he had estimated that during 2005, ''[t]he expected average monthly convenience store sales of nonprescription drug products containing pseudoephedrine (hcl) in Georgia were * * * $82.'' GX 26 at 2.[11]

Respondent called as an expert witness, Dr. Danny N. Bellenger. Dr. Bellenger holds a PhD in Business Administration and is a Professor and Marketing Research Fellow at the Robinson College of Business at Georgia State University. RX 31, at 2. Dr. Bellenger previously served as chairman of the Department of Marketing at Robinson, and was the Dean of the College of Business at Auburn University. *Id.*

Dr. Bellenger disputed Mr. Robbin's figures for the expected monthly sales range of pseudoephedrine at convenience stores. Dr. Bellenger testified that he did not agree with the conclusions of Mr. Robbin's reports and that reports did not ''agree with each other.'' Tr. 521. More specifically, Dr. Bellenger noted that one of Mr. Robbin's reports stated that ''two in 1,000 * * * convenience store shoppers would be expected to buy Sudafed,'' but in another report, Mr. Robbin had stated ''that there's 120,000 purchasers or customers [who] come into a convenience store.'' *Id.* at 523; *see also* GX 25, at 11 (stating that ''[t]he average annual number of shoppers in a convenience store (excluding gasoline purchases) is about 120,000'').[12]

Dr. Bellenger explained that if two out of a 1,000 customers purchased pseudoephedrine and a convenience store has 120,000 customers, at least 240 of these persons would buy the product over the course of a year or ''twenty per month for an average convenience store.'' Tr. 523. Dr. Bellenger testified that multiplying this number ''times the average retail price of * * * Sudafed'' gives an ''estimate of about $170 * * * based on the numbers that are in the reports.'' *Id.*

Dr. Bellenger subsequently testified that he determined the average price of Sudafed by ''looking at the wholesale prices and assuming a markup,'' and that he ''also looked in Kroger to see what it cost, but [the price] would vary a lot * * * by store.'' *Id.* at 662–63. However, Dr. Bellenger did not ''recall the actual figure'' he used for the retail price. *Id.* at 663. Nor did he explain what source he used for the wholesale price figure, or what price he used.

Dr. Bellenger also testified that he confirmed his estimate by multiplying the percentage of convenience store shoppers who purchase pseudoephedrine (.0027) times the average annual merchandise sales of convenience stores ($770,000). Dividing this figure by twelve results in a monthly sales figure of $173.25, which is ''a similar number'' to the sales figure obtained in the first method. *Id.* at 524.[13]

Dr. Bellenger further testified that Mr. Robbin's methodology was based on several assumptions which he contended ''are not consistent with reality.'' *Id.* at 527. More specifically, he contended that one of Mr. Robbin's assumptions was that ''all retailers [including] convenience stores carry a full line of all'' non-prescription medicinal products that are reported in the Economic Census's merchandise line, and that this is ''not consistent with the common practice'' because ''a convenience store * * * carries a much narrower line of most products.'' *Id.* at 526; *see also id.* at 583, 664. According to Dr. Bellenger, ''when the conveniences stores sell less than a full line and the supermarkets and drugstores sell the full line, * * * it distorts the numbers,'' by ''caus[ing] the estimate for Sudafed for the convenience store to be lower than it actually should be.'' *Id.* at 664.[14]

While the ALJ credited Dr. Bellenger's testimony that the monthly expected sales figure of pseudoephedrine products at convenience stores was $173.25, *see* ALJ at 24, I decline to adopt this finding. While Dr. Bellenger's testimony that approximately 240

[8] Mr. Robbin holds degrees from Harvard College and Columbia University and is an expert in multivariate statistical analysis and the processing of economic census and population data. *See* GX 25, at 1–2. He also founded Claritas, Inc., a company which is now the largest producer and seller of census-based consumer marketing information products, systems and services. *Id.* at 1.

[9] According to this report, convenience stores selling gasoline account for 1.75% of the non-prescription drug market; convenience stores that do not sell gasoline account for .95% of the market. GX 24, at 3. All other establishments combined account for only .21%. *Id.*

[10] While the text accompanying table 3 uses the figure of 5.59% as the percentage of non-prescription drug buyers who purchase pseudoephedrine at convenience stores, the previous table makes clear that the actual percent is 4.59%. *Compare* GX 24, at 5, with *id.* at 4.

[11] Mr. Robbin noted that data from the 2002 Economic Census for Florida (a neighboring State) indicated that the expected sales were 21% lower than the data from the 1997 Economic Census suggested. GX 26, at 1–2. Mr. Robbin thus stated that ''using the same factor as encountered in Florida would produce an updated estimate of $65.'' *Id.* at 2.

[12] With respect to the number of convenience store shoppers who would purchase Sudafed, Dr. Bellenger testified that ''[t]he numbers which I've computed actually says its 2.7 [out of 1,000], but * * * that's a relatively minor difference.'' Tr. 523. Dr. Bellenger testified that he used ''the data that was in [Mr. Robbin's] report, and [did] exactly the computations [Mr. Robbin] did * * * and came out with * * * 2.7 customers in 1,000.'' *Id.* at 581. In his testimony, Dr. Bellenger did not specifically identify which figures he used, and as explained above, it appears that one of Mr. Robbins' reports contains a transcription error. *See supra* n. 10.

[13] Notably, Dr. Bellenger used the figure which appears to be based on a transcription error in one of Mr. Robbin's reports. If, however, the .0021 (or 2.1 shoppers out of 1,000) figure is used, *see* GX 24, at 5; the average monthly sale is $134.75.

[14] Dr. Bellenger also testified that one of Mr. Robbin's reports assumed that all stores were ''expected to sell the same amount,'' and that this requires the assumption that the stores are ''all the same size'' and ignores the stores' locations. Tr. 529. As Dr. Bellenger further testified, ''[i]f you've got a very large store attached to a gasoline station selling on the interstate, the mix of products is not going to be the same as a small rural store.'' *Id.* at 530. I note, however, that in one of the reports, Mr. Robbin estimated a sales range which was based on ''differences in sales occurring as a consequence of store size, location, hours, advertising expenditures and management practices.'' GX 25, at 7. This would appear to address Dr. Bellenger's testimony on this point.

persons would purchase pseudoephedrine at a convenience store over the course of a year calls into question the validity of the Government's figure, he did not establish the source of the wholesale price information (and the price) that he relied upon or the amount of markup he used. As for his testimony regarding pricing at Kroger, he did not testify as to what that price was, what size package it was, and stated that the price would vary a lot by store. Finally, while Dr. Bellenger ''confirmed'' his estimate by multiplying the percentage of convenience store shoppers who purchase pseudoephedrine by the average store's sales volume, this methodology seems to require a major assumption in its own right—that the average amount spent by a customer in purchasing pseudoephedrine is the same as the average purchase of those convenience store customers who buy other products.

Accordingly, I conclude that neither the Government's nor Respondent's evidence reliably establishes the monthly expected sales range.[15] For purposes of this case, I assume without deciding that Dr. Bellenger's figures are accurate.

Dr. Bellenger also testified regarding several other matters. With respect to the size of a retailer's purchases, Dr. Bellenger testified that buying a case quantity may be a legitimate business decision ''to invest in more inventory so as to lower [its labor] cost of taking inventory and processing order forms.'' Tr. 549. According to Dr. Bellenger:

> The simple fact that someone, in * * * their business model, decides to order in large quantities is not necessarily suspicious in and of itself. What would be suspicious to me is if someone repeatedly ordered in large quantities. So I would think that looking for repeated large quantity orders by the same store or a combination of products which go into the production and ordering in large quantities * * * of a group of products which are involved in the manufacture of some illicit substance would be important for determining suspicious orders.

Id. at 549–50.

Amplifying this testimony, Dr. Bellenger added that to purchase a case quantity (144 bottles) is ''one of two things. It's a conscious business decision where a store owner has decided it's more efficient to order in large quantities, put it in the stockroom, and make fewer orders, and have less labor involved.'' *Id.* at 570. Dr. Bellenger than allowed that ''maybe there's some nefarious practice involved here,'' but that if this was so, ''you would see repeat purchases of large quantities.'' [16] *Id.* at 570–71.

The ALJ also credited Dr. Bellenger's testimony that in reviewing the various exhibits, he noted that while ''some of [Respondent's customers] were buying by case lot,'' he did not find a pattern of the customers ''buying [ten] 144s.'' Tr. 571 (cited at ALJ at 25). Respondent's own evidence shows, however, that there were multiple instances in which Respondent sold case quantities that suggest that the sales were for an illicit purpose. *See* RX 12.

For example, during the year 2004, Respondent sold cases (144 bottles) of Max Brand Pseudo to the Coastal Food Mart of Rockmart, Georgia, on eight occasions: January 21, February 2, March 4, April 19, June 3, July 14, August 2, and September 5.[17] *Id.* at 52, 82, 86, 91, 93, 97, 99. On cross-examination, Dr. Bellenger acknowledged that the store was ''probably * * * buying in excess of what would be expected,'' that ''a case over a six-month period is rational,'' but this store's purchases ''would raise [his] suspicions.'' Tr. 619–20. Moreover, when asked whether this store's retail sales would be ''many standard distributions beyond'' the $175 figure he calculated for average monthly sales, Dr. Bellenger answered: ''Right.'' *Id.* at 620. Dr. Bellenger also acknowledged that it would not be logical for a store to ''order additional inventory on a regular basis unless they were selling it.'' *Id.* at 642.

On re-direct, Dr. Bellenger opined that ''it would be highly unlikely in the normal course of business'' for an entity like Sunny Wholesale to detect these transactions. *Id.* at 646. According to Dr. Bellenger, ''you've got to be looking real, real, real close'' to find these transactions ''given the scope of [Respondent's] business,'' and the fact that the product category was ''less than two percent of the total business and these instances would account for a fraction of that.'' *Id.* at 647.

The Coastal Food Mart was not, however, the only store to which Respondent repeatedly sold large quantities of pseudoephedrine. During the same year, it sold a case quantity to Chitra Inc.'s Quick Stop of Rome, Georgia, on eight separate dates: January 4, April 8, June 14, July 5, August 2, August 20, September 14, and October 11. *See* RX 12, at 80, 91, 94, 95, 97, 98, 100, & 101. It sold a case to the Phillips 66 Mart of Hapeville on eight occasions: January 5, February 5, March 22, April 1, May 5, June 3, August 17, and September 12. *See id.* at 80, 84, 88, 89, 92, 93, 98 & 99.

It sold a case to the R & S Grocery of Columbus on nine dates: January 21, February 2, March 2, April 1, May 5, June 21, July 7, August 30, and September 29. *See id.* at 82, 86, 89, 92, 95, 96, 98, & 100. It sold a case to the Stop In of Bremen on nine occasions: January 5, February 3, March 2, April 1, May 5, June 1, July 27, August 20, and September 14. *See id.* at 52, 80, 83, 86, 89, 92, 93, 98, 100.

Moreover, the record shows that there were instances in which Respondent sold to two customers who used the same address. For example, Respondent sold case quantities to the P & K Mini Mart, with an address of 461 Columbia Drive, Carrollton, on January 6, February 10, March 4, April 8, and May 5. *See id.* at 53, 81, 84, 86, 89. Yet it also sold a case to a customer it listed as the ''Quick Stop/Tushar/BP'' with the same 461 Columbia Drive, Carrollton address, on February 2, March 4, April 8,[18] May 5, July 22, and August 1. *See id.* at 54, 83, 86, 91, 96, 97. Moreover, Respondent sold a case to the DJ Food Mart, with an address of 15582 HWY 27, Trion, on January 6, February 10, March 4, April 8, May 5, and June 15. *See id.* at 54, 81, 85, 87, 90, 94. It also sold a case to a customer it listed as ''BJ's Food Market # 1'' with the address of 15582 HWY 27 North, Trion, on February 10, March 4, April 8, May 5, June 4, July 27, July 22, August 18, and September 5. *See id.* at 54, 84, 87, 90, 93, 96, 98, 99.

Relatedly, Dr. Bellenger testified that ''unusual orders become very challenging if there's a relatively small number of * * * those orders * * * given the large numbers of people [a business is] dealing with.'' *Id.* at 556. Dr. Bellenger acknowledged, however, that ''you could create a computer program which would create an exceptions report.'' *Id.* at 648. Dr. Bellenger nonetheless maintained that it would be difficult to track these

[15] Accordingly, I agree with the Government's exception and decline to adopt the ALJ's finding.

[16] Dr. Bellenger added that he was not ''sure how much of this is stuff is required to make the illicit drugs in question,'' and that he was ''not sure if 144 [bottles] will make enough to matter or not.'' *Id.* at 571. The Government's evidence showed, however, that Georgia and the adjacent States had experienced a proliferation in smaller methamphetamine labs which typically produced a quarter to a half ounce. *Id.* at 35. The evidence also showed that ''even unskilled persons can obtain a 50–70% yield of methamphetamine.'' GX 15, at 8. Contrary to Dr. Bellenger's understanding, four sixty-count bottles of 60 mg. pseudoephedrine would provide enough material for even an unskilled person to manufacture a quarter ounce of the drug; 144 bottles would provide enough material to make nine ounces.

[17] Each case sold for $1006.56.

[18] The record indicates that on this date, Respondent sold 96 bottles for a total sale of $671.04. RX 12, at 91.

purchases and that finding a high volume purchase ''in the normal course of business would be an accident.'' *Id.* at 647.

I reject Dr. Bellenger's testimony regarding the difficulty of detecting excessive purchases. As noted below, during an earlier meeting with DEA investigators, Mr. Sayani stated that ''a typical sale'' of listed] chemicals ''was two to three boxes,'' with each ''box contain[ing] twelve bottles of 60-count tablets.'' *Id.* at 331. Notably, during this meeting, the DI specifically told Mr. Sayani that an order of ''ten boxes [or 120 bottles] would be suspicious,'' and that if a customer ''requested cases quantities'' or 144 bottles, ''he was to notify DEA.'' *Id.* at 336.

Moreover, Respondent's records show that many of these customers were not trying to hide the size of their purchases by purchasing smaller quantities on different dates. Rather, they were openly ordering case quantities, *see* RX 12, at 79–101; and as found above, several of these customers did so with disturbing frequency. Finally, even crediting Dr. Bellenger's testimony that in some instances, a convenience store owner could make a legitimate business decision to purchase a case quantity, it does not require that much effort to call up a customer's account history to determine how frequently the customer was purchasing the products.

Respondent's History as a Registrant

In September 1999, Respondent applied for a DEA registration to handle list I chemicals at its Forest Park warehouse. Tr. 703. Prior to being granted the registration, DEA DIs conducted a pre-registration inspection. *Id.*; *see also id.* at 323. During the inspection, a DI provided Mr. Sayani with a copy of the DEA *Chemical Handler's Manual* and a document which listed the thresholds for pseudoephedrine and ephedrine (which trigger additional reporting and recordkeeping obligations). *Id.* at 726–27. Moreover, Mr. Sayani told the DI that ''he would deliver [the listed chemical products] to his customers.'' *Id.* at 323.[19] Shortly after the inspection, Respondent obtained a registration for this location.

On January 31, 2001, Respondent applied for a registration to handle pseudoephedrine, ephedrine, and phenylpropanolamine, at its Decatur warehouse. GX 2. Accordingly, on March 31, 2001, DEA DIs went to Respondent's Decatur facility to conduct a pre-registration inspection. Tr. 246. During the inspection, the DIs met with Mr. Sayani and provided him with another copy of the *Chemical Handler's Manual*, as well as notices stating that drug products containing phenylpropanolamine were being used by drug traffickers to manufacture amphetamine, GX 5, and combination ephedrine and pseudoephedrine were being used to by traffickers to manufacture amphetamine and methamphetamine. GX 6, Tr. 249. The DIs also provided Mr. Sayani with notices pertaining to recordkeeping and reporting of theft and losses of listed chemical products. Tr. 249.

The DI had previously requested that Mr. Sayani provide her with lists of his suppliers, the products he intended to carry, and his proposed customers. *Id.* 246–47. On the list of suppliers and products, Mr. Sayani indicated that he intended to sell products distributed by Compare Generics of Hauppauge, New York, including Max Brand and Heads Up, two brands of products which ''are notoriously popular [with] methamphetamine traffickers.'' [20] GX 34, at 11; GX 27.

During the inspection, the DIs reviewed the *Chemical Handler's Manual* with Mr. Sayani, placing special emphasis on its provisions pertinent to record keeping, security, the need to know his customers, and requiring proof of identity from his customers. Tr. 321. The DIs also discussed with Mr. Sayani the listed chemical thresholds and the requirement to report suspicious orders. *Id.* Mr. Sayani again represented that the listed chemical products ''would be delivered just like they were at his Forest Park location.'' *Id.* at 323. The DI observed, however, that Respondent did not ''deliver most of the time'' as ''[t]he majority of the time the customers were coming'' to the warehouse. *Id.* at 324.[21]

Based on Mr. Sayani's list of proposed customers, one of the DIs checked to see if DEA's computer system held information regarding the customers. *Id.* at 255. The DI also visited several of the customers' addresses to verify whether there was a business at the location. *Id.*

Moreover, the DIs' supervisor decided that before sending the report on the Decatur application to DEA Headquarters, the DIs needed to inspect Respondent's practices at its Forest Park warehouse because the location had ''never been audited.'' *Id.* at 370. Accordingly, on June 30, 2001, several DIs went to the Forest Park warehouse and conducted an inspection. *Id.* at 255.

Upon their arrival, the DIs met with Mr. Sayani and asked him to provide them with an inventory and a list of the listed chemical products Respondent distributed. *Id.* at 256. One of the DIs also asked him for a list of his customers and suppliers and provided him with another copy of the *Chemical Handler's Manual* and several DEA notices. *Id.* During the inspection, the DIs observed that Respondent's list I products were co-mingled with other products in the warehouse and were not stored in a secure area.[22]

The DIs then proceeded to conduct an audit of Respondent's handling of list I products for the period January 1, 2001, through the close of business on June 30, 2001. GX 31. The DIs selected eleven non-traditional products to audit; with the assistance of Mr. Sayani, they counted the actual number on hand of each of the selected products. Tr. 264 & 275; GX 30.[23] Because Mr. Sayani did not have a previous inventory of the products,[24] *id.* at 260, the DIs assigned an opening value of zero for each of the products. *Id.* at 377; GX 31. Assigning an opening value of zero for a product should result in an overage if, in fact, there was any of the product on hand on the beginning date of the audit and the distributor is keeping (and provides) complete records of its purchases and distributions.[25] Tr. 269 & 377.

To complete the audit, the DIs requested that Mr. Sayani provide them with his purchase invoices and sales invoices. *Id.* at 266. The sales invoices did not, however, clearly indicate the package size (e.g., whether it was a six count packet or 60 count bottle). *Id.* at

[19] Mr. Sayani made the same representation during the pre-registration investigation of Respondent's application for the Decatur location. Tr. 323.

[20] On its product list, Respondent also indicated that he would be distributing four products from BDI Marketing, Inc., another firm whose products have been found at numerous illicit methamphetamine labs. GX 4. However, according to the DI, none of these products contained a list I chemical. Tr. 250.

Respondent also listed three other suppliers; the listed chemical products he listed under these suppliers were nationally recognized brands such as Tylenol, Advil, Nyquil, Contac, and Vicks 44. *See* GX 27.

[21] The DI also obtained information that Respondent had a single employee who was ''his delivery guy.'' Tr. 324. The position was vacant for some unspecified period of time. *Id.* at 324–25.

[22] At some point between 2002 and 2005, Respondent built a cage at its Forest Park warehouse in which it stored its list I chemical products and installed several security cameras. RX 25a. The cage had a separate cash register and window at which the products were paid for and delivered to the customer. *Id.*

[23] The DIs provided Mr. Sayani with a copy of the count. Tr. 362.

[24] At the hearing, a DI testified that DEA's regulations do not require that a list I chemical distributor keep an inventory. *Id.* at 261.

[25] Assigning an opening value of zero will also result in an undercount of a shortage if any product had actually been on hand on the opening date of the audit.

267. The DI therefore contacted Mr. Sayani and requested additional information. *Id.* at 266–67. While Mr. Sayani then provided his sales tracking reports, even these were sometimes lacking the necessary information. *Id.* at 267.

The audit found that there were shortages with respect to six of the eleven products.[26] *See* GX 31. Most significantly, Respondent was short 7640 sixty-count bottles of Heads Up and 3656 sixty-count bottles of Max Brand. *Id.* Moreover, Respondent was short 284 sixty-count bottles of Mini 2-Way Action. *Id.* Respondent was also short 180 six-count packets of Max Brand, 154 six-count packets of Mini 2-Way Action, and 262 packets of Max Brand Pseudo (24-count). *Id.*

Regarding the audit, Mr. Sayani testified that upon being served with the Show Cause Order, which had alleged that he was short approximately 10,000 bottles of Max Brand and Heads Up, he checked his July 2001 inventory and had 2069 bottles on hand and did not ''know where this 10,000 figure came from.'' Tr. 715. Mr. Sayani further testified that because 10,000 bottles is a large amount, he ''would know where [it] is going.'' *Id.* at 716.

The ALJ did not make ''precise findings'' on the amount of the shortages. ALJ Dec. 30 at n.6. I do.

Notably, Mr. Sayani's testimony that he had 2069 bottles on hand according to his July 2001 inventory is consistent with the total amount of product that he and the DIs physically counted.[27] Moreover, the DIs found that the largest shortage was in the Heads Up 60-count bottles, yet none of this product was on hand when the physical count was on hand. *See* GX 31. The audit of this product was thus based entirely on Respondent's records of its purchases and distributions; if the amount was incorrect, Respondent could have produced his records to show that.

Moreover, for each of the audited products, the amount of the shortages (11,296 60-count bottles of Max Brand and Heads Up) was determined based on the discrepancy between the amount of these products which Respondent obtained from his suppliers during the audit period and the sum of the amount it had on hand on June 30 and the amount its sales records showed it had distributed during the audit period. Mr. Sayani's assertion aside, he offered no credible evidence that gives me reason to reject the audit's finding. Accordingly, I adopt as findings, the audit results as listed in GX 31.

As found above, during the visit, the DIs also discussed with Mr. Sayani the size of a normal monthly sale to a single store of non-traditional products. *Id.* at 330. Mr. Sayani told the DIs that ''[a] typical sale was two to three boxes,'' with each ''box contain[ing] twelve bottles of 60-count tablets.'' *Id.* at 331. As found above, however, Respondent frequently sold listed chemical products in far larger quantities and did so notwithstanding that the DIs had informed him that sales of case quantities were suspicious and should be reported to DEA. *See* RX 12; Tr. 336.

Following the inspection, several DIs were assigned to conduct customer verifications.[28] ALJ at 15–17. The verifications serve several purposes including determining whether the customer actually exists, the nature of its business and whether it is legitimate, and whether the customer has a business relationship with the distributor. Tr. 139, 145, 187, 202, 355–56. As the ALJ found, the verifications produced ''mixed results.'' ALJ at 15.

One DI, who was assigned twelve verifications, found that several of the businesses were convenience stores, gas stations, and a liquor store. Tr. 142–45. Moreover, upon visiting the addresses of three of the customers, two of which were listed as businesses (Pamela's Unique Clothing and Reliance Wholesale Supply), and one which was listed as an individual (M.S.), the DI found that they were residences and that there were no signs of businesses. Tr. 142 & 144. The DI further found that the R.S. Corporation was a Blimpie restaurant, *id.* at 142, and that Artistic Sales was a gift shop which did not sell list I chemicals. *Id.* at 143.

Another DI testified that when she and her partner went looking for Ashley's Boutique, they could neither find the store nor the address that Mr. Sayani had given for it. *Id.* at 202–03, 233. The DIs further found that the Atlanta Cleaners Plus ''was closed down.'' *Id.* at 203. While the DIs found that the Matierra Mexicana #3 was a supermarket, the store did not purchase items from Respondent. *Id.* at 203–04. Moreover, one of the establishments was a liquor and check cashing store. *Id.* at 204.

Another customer (BDI Inc.) was a Shell gas station whose manager stated that while he had purchased products from Respondent nine months earlier, he no longer did so. *Id.* at 205. Moreover, the manager told the DIs that Respondent ''did not deliver'' and that ''he had to drive to [Respondent's] facility to pick up his products.'' *Id.* Finally, the DIs determined that another customer (Golden Dealers) ''was a house that was located in a cul-de-sac'' and there was no store on the premises. *Id.* at 206.

Following the customer verifications, one of the DIs and her supervisor met with Mr. Sayani and his attorney Henry D. Frantz, Esq., to discuss their concerns that some of Respondent's customers were not legitimate. *Id.* at 254. More specifically, the DI told Mr. Sayani that the DI had ''found numerous suspect customers that normally would not be selling these type of products.'' *Id.* at 372. The DI also expressed her concern that some of Respondent's customers were engaged in wholesale distribution out of their homes and were therefore required to be registered under 21 U.S.C. § 823(h), but were not. *Id.* at 259.

Upon being informed by the DIs that ''some of the customers were suspicious,'' Mr. Sayani stated that he had ''provided * * * a list of the customers he thought * * * would purchase from him, whether it was list I chemicals or other products that he handled.'' *Id.* at 254. At the meeting, the DIs also provided Mr. Sayani and his attorney with a list of 147 customers who they deemed suspicious and instructed him to investigate them. *Id.* at 687.

Several weeks thereafter, Respondent's attorney wrote a letter to the DIs reporting that 119 of the customers owned either a convenience store or grocery. RX 8, at 1. Respondent's attorney further reported that 14 of the customers had ''never purchased a list I'' product and that three of them ''have a DEA license.'' *Id.* As for the remaining suspicious customers, the letter stated that Respondent could not contact eight of the customers and that three of them were jobbers who had purchased small amounts. *Id.*

Respondent's attorney further wrote that it ''had tightened up * * * his business with regard to checking out the customer on all sales pertaining to list I chemicals.'' *Id.* More specifically, the letter stated Respondent ''currently asks

[26] As the DI explained, the audit was conducted by adding Respondent's purchases to the opening inventory figure and comparing that figure with the total of the ending inventory plus the amounts which Respondent distributed to its customers. Tr. 268, GX 31.

[27] Mr. Sayani did not state which products were included in his 2069 figure. According to GX 31, the physical count found 1584 Max Brand (60 count) bottles, 36 Mini 2-Way (48-count) and 428 (60-count) bottles, and 18 Mini Twins (60 count bottles). These products would total 2066 bottles. I further note the testimony that Mr. Sayani agreed with the results of the inventory. Tr. 266.

[28] According to the record, Mr. Sayani provided two separate customer lists. One was a list which Mr. Sayani represented as being his actual Forest Park warehouse list I customers; the other was a list of his potential list I customers for his Decatur warehouse. Tr. 373–74.

for a tax identification number, business license[,] as well as a DEA permit if the customer does not have a store.'' *Id.* at 2.[29]

At the hearing, Mr. Sayani testified that he did not go to a new customer's store to verify whether it was legitimate ''because at the time of opening the account, we get enough proof from them that they're legitimate * * * or that they're who they say'' they are. Tr. 768. Mr. Sayani acknowledged, however, that anyone who applied for a state or local tax identification number would be issued one. *Id.* at 769.

At the hearing, Mr. Sayani further testified that upon being served with the Show Cause Order, which referred to Max Brand and Heads Up as non-traditional products, he stopped selling the products. *Id.* at 714. As found above, the first Show Cause Order was dated October 20, 2004, and served on Respondent no later than November 19, 2004, when his counsel requested a hearing.

Contrary to Mr. Sayani's testimony, Respondent's ''Sales Tracking Report'' indicates that it repeatedly sold Max Brand after the first Show Cause Order was served and frequently did so in large quantities. Moreover, there is evidence that it made multiple large sales to several stores.

For example, on November 30, 2004, it sold $504 of Max Brand 2–Way to the Lucky Star of Brookfield, Georgia. RX 12, at 67. This was followed by two December 12, 2004 sales, each totaling $1509.84, to the Dixie Stop of Twion and the Modern Kwik Shop of Summerville, *id.* at 101, and a December 19, 2004 sale of $504 to Jay Swaminarayan, Inc., of Tifton, Georgia. *Id.* at 74. On February 13, 2005, it sold an additional $861.12 of the products to both the Dixie Stop and the Modern Kwik Shop.[30] *Id.* at 104.

On both November 29, 2004, and January 3, 2005, it sold $1006.56 of the products to ABJ Ashburn, Inc., of Ashburn. *Id.* at 106 & 101. Respondent made further sales of the products to this store on January 27, February 17, and February 25, when it sold $430.56 worth on each date, and on both March 20 and April 2, when it sold $861.12 of the products to this store. *Id.* at 101–2, 105–6.

Moreover, on January 8, 2005, it sold $861.12 of Max Brand pseudoephedrine to Priya Nidhi, Inc., of Calhoun, Georgia. *Id.* at 53. Notably, it has previously sold this establishment $1006.56 on October 15, 2004. *Id.* at 52.

On February 5, 2005, it made two separate sales of the products (one totaling $504, the other totaling $430.56) to the West Gray BP of Gray, Georgia, *id.* at 78 & 112; on February 18, 2005, it sold $504 of the product to the Razk, Inc., Marathon of Douglasville. *Id.* at 64. And on February 20, 2005, it made two separate sales (one worth $504, and one worth $430.56 of the products) to Krishna Corp. of Huntsville, Alabama. *Id.* at 72 & 107.

On January 13, February 6, March 1, and April 1, 2005, it sold $430.56 worth of the products to the Texaco 10 Opelika of Phenix City, Alabama; on January 13, it also sold an additional $576 of the products to this store. *Id.* at 102, 104–06, 113. Moreover, on both February 20 and April 2, it sold $861.12 of the products to USA Trading Inc., of Pheonex (sic) City, Alabama. *Id.* at 102 & 104. It also sold $861.12 of the products to Thakurs Fuel, Inc., of Pinehurst, Georgia, on each of these dates: February 25, March 20, and April 8, 2005. *Id.* at 103, 105 & 109.

The evidence further shows numerous other instances in which Respondent sold large quantities of Max Brand as late as April 2005. *Id.* at 110–12. More specifically, on April 3, 2005, Respondent sold $861.12 of the product to each of the following stores: Amin Enterprises, Inc. of Lithonia, the Coastal Food Mart of Rockmart, and the Hill Top Gas Station of Bremen. *Id.* at 110–11. Moreover, on April 6, it sold $861.12 worth of the products to Wendel's JKF, Inc., Discount Tobacco #2, and Discount Tobacco; all three stores were located in Americus, Georgia.[31] *Id.* at 111. Finally, between April 10 and 16, 2005, it sold $504 worth of the products to eleven establishments (the DM Cotton Patch of Richland, DM Shopper Stop # 334 of Cusetta, OM Traders #271, DM Shopper Stops #s 442 and 451, all of Cataula; KDC Inv. and RDSP, both of Columbus; Hyaat Groceries of Covington; Jai Bhrahmani, Inc., of Buchanan; Gainesville BP of Gainesville; all in Georgia, and Prem, Inc., of Alexander City, Alabama. *Id.* at 111–12.

The ALJ specifically found—based on Mr. Sayani's testimony—that ''Respondent stopped selling Heads Up and Max Brand products because they were identified as 'non-traditional' items by the DEA in the October 2004 Order to Show Cause.'' ALJ at 21. To the extent this finding implies that Mr. Sayani stopped selling the products shortly after service of the Order, it is inconsistent with the evidence which shows that for approximately five months after the Order was served, Respondent continued to sell these products. Indeed, Mr. Sayani's testimony begs the question of why, if the products were identified in the Show Cause Order, it took five months to stop selling them.

The Government also produced evidence showing that Respondent had distributed iodine tincture to several of its customers. *See* GX 46, at 1, 2, 3, 15, & 16. Moreover, Respondent's evidence shows that it distributed 2,852 (1 oz.) units of this product to a single store between June 8, 2003, and November 6, 2004. RX 16, at 5.

Regarding the allegation that Respondent sold excessive quantities of iodine to convenience stores, the Government offered anecdotal evidence in the form of a DI's testimony that she had visited more than 100 convenience stores in both the course of her official duties and as a consumer and had never been able to find tincture of iodine. Tr. 396. But in contrast to the extensive evidence the Government introduced regarding the expected sales range of pseudoephedrine and ephedrine at convenience stores, it produced no such evidence with respect to iodine tincture.

The Government also introduced into evidence several documents indicating that iodine was used in manufacturing methamphetamine. The first of these was a blue notice, which was reprinted in the *Chemical Handler's Manual*, a copy of which was provided to Mr. Sayani at both the pre-registration inspection and the schedule regulatory inspection. Tr. 307. The notice stated that ''iodine became a federally regulated List II chemical on 10/3/96,'' and that it was being provided to ''[m]ake you aware that iodine is being used to clandestinely produce methamphetamine.'' GX 36a.

The Government also introduced into evidence an ''Information Brief'' published by the National Drug Intelligence Center entitled: *Iodine in Methamphetamine Production*. GX 36B; Tr. 308. The document stated that ''[s]mall-scale methamphetamine producers who are unable to obtain iodine crystals occasionally produce them from iodine tincture by mixing iodine tincture with hydrogen peroxide.'' GX 36B, at 2. This document further explained that ''[t]his is a time-consuming process that yields a very small amount of iodine crystals in relation to the amount of tincture and hydrogen peroxide use,'' and also noted that ''[i]odine tincture is not regulated

[29] The letter also stated that Respondent would ''cross-check * * * all customers purchasing list I items between'' its two warehouses, and that it was maintaining ''an updated inventory.'' RX 8, at 2.

[30] Respondent had also sold $1509.84 of the products to the Modern Kwik Stop on November 14, 2004. RX 12, at 53.

[31] The address of Discount Tobacco # 2 is listed as 137 N. Lee St; the address of Discount Tobacco is listed as 107 South Lee St. RX 12, at 111.

by law.'' *Id.* Putting aside the statement that iodine tincture was not regulated, the Government produced no evidence that this document was ever provided to Mr. Sayani.

To counter the Government, Respondent introduced a copy of a Notice of Proposed Rulemaking (NPRM) in which the Agency proposed ''the control of chemical mixtures containing greater than 2.2 percent iodine.'' DEA, *Changes in the Regulation of Iodine Crystals and Chemical Mixtures Containing Over 2.2 Percent Iodine*, 71 FR 46144, 46145 (Aug. 11, 2006); RX 28. The NPRM expressly stated that ''[i]odine two percent tincture and solution U.S.P. are sold at a wide variety of retail outlets and have household application as antiseptic and antimicrobial products. These products will not become regulated under the proposed regulation.'' 71 FR at 46146. The NPRM further noted that ''[w]hile the regulatory controls placed on iodine apply to iodine crystals, *they have not pertained to iodine tinctures (which are considered chemical mixtures).*'' *Id.* (emphasis added).

In discussing the rationale for the proposed rule, the NPRM further explained that because ''seven percent iodine tincture and solutions are the predominant iodine-containing chemical mixtures diverted by traffickers * * * these chemical mixtures should be subject to CSA chemical regulatory controls.'' *Id.* at 46149. The NPRM then noted that ''[t]wo percent iodine tincture and solutions are also diverted, but DEA has not documented the frequent diversion of these materials at clandestine laboratories. Therefore, DEA does not intend to regulate the two percent iodine tincture or solution at this time.'' *Id.*

Respondent also called as a witness a sales representative for the company which supplied him with iodine tincture. The sales rep. testified that he had sold Respondent iodine tincture with an iodine concentration of only one to two percent, Tr. 437–38, and there is no evidence refuting this. *See* RX 11a & b. The sales rep. further testified that it was his understanding that a DEA registration was not required to sell these products, and that while he had been selling the products for eight to nine years, he had ''no idea'' that iodine tincture was being diverted into the illicit manufacture of methamphetamine. Tr. 439 & 442.

Discussion

Section 304(a) of the Controlled Substances Act provides that a registration to distribute a list I chemical ''may be suspended or revoked * * * upon a finding that the registrant * * * has committed such acts as would render [its] registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a)(4). Moreover, under section 303(h), ''[t]he Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest.'' 21 U.S.C. 823(h). In making the public interest determination, Congress directed that the following factors be considered:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Id. § 823(h).

''These factors are considered in the disjunctive.'' *Joy's Ideas*, 70 FR 33195, 33197 (2005). I may rely on any one or a combination of factors, and may give each factor the weight I deem appropriate in determining whether a registration should be revoked or an application for a registration should be denied. *See, e.g., David M. Starr*, 71 FR 39367, 39368 (2006); *Energy Outlet*, 64 FR 14269 (1999). Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005).

While I reject the Government's allegations based on Respondent's sales of iodine tincture, I nonetheless conclude that the evidence under factors one, four, and five make out as *prima facie* case that Respondent's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(h). Moreover, while I acknowledge that Respondent has improved its physical security, it has otherwise failed to demonstrate that it has adequate procedures in place to protect the public from the diversion of listed chemical products. Finally, I find especially disturbing Respondent's conduct in continuing to sell large quantities of listed chemical products even after the service of the initial Show Cause Order.

Finally, I reject Respondent's argument that revoking his registration would violate its constitutional right to due process because it has not sold listed chemicals ''in excess of the quantities authorized in the published rules * * * of the DEA.'' Resp. Prop. Findings at 16. I also find unavailing his claim—based on the ALJ's finding that his inventory procedures were inadequate—that it ''is once again being asked to comply with something that is not in the DEA rules,'' and that this is another violation of its right to due process. Resp. Exceptions at 6. Accordingly, Respondent's Forest Park registration will be revoked; its pending renewal application for its Forest Park facility and its application for a registration at its Decatur facility will also be denied.

Factor One—Maintenance of Effective Controls Against Diversion

Under DEA precedent and regulations, this factor encompasses a variety of considerations and is not limited to whether the registrant maintains adequate physical security of listed chemical products. ALJ at 29–30. A DEA regulation requires the consideration of the adequacy of a registrant's ''systems for monitoring the receipt, distribution, and disposition of List I chemicals in its operations.'' 21 CFR 1309.71(b)(8). Relatedly, a registrant must exercise a high degree of care in monitoring its customer's purchases. *Rick's Picks*, 72 FR 18275, 18278 (2007), *John J. Fotinopoulos*, 72 FR 24602, 24605 (2007), *D & S Sales*, 71 FR 37607, 37610 (2006); *Joy's Ideas*, 70 FR 33195, 33197–98 (2005).

It is undisputed that Respondent upgraded its physical security by building storage cages, installing video cameras, and assigning a person to distribute the products from the cage. This, however, is only one part of a registrant's obligation to maintain effective controls against diversion.

Here, the record shows that Respondent's procedures for verifying the legitimacy of its listed chemical customers were wholly inadequate to prevent diversion. Moreover, those procedures remain so. While following the meeting in which agency investigators notified Respondent of their concerns regarding the legitimacy of its customers, Respondent's counsel stated that it had ''tightened up'' its procedures and was requiring that its customers produce a tax identification number and business license, RX 8, at 1–2 2, these documents can be easily obtained by anyone. While Mr. Sayani

testified that this provided ''enough proof'' that his customers were ''legitimate,'' he did not have an employee personally visit a new customer to determine whether it was a legitimate business with a need for listed chemical products.

Moreover, Respondent generally operated as a ''cash and carry'' business and only delivered if a customer ordered at least $ 1,000 worth of the items and requested that it do so. Thus, a customer could be obtaining listed chemical products from multiple sources and Respondent would have no knowledge of this. *See Holloway Distributing*, 72 FR 42118, 42124 (2007) (noting a registrant's obligation to determine whether a customer is receiving listed chemical products from other suppliers).

As the results of the customer verifications demonstrate, Respondent was indifferent to its obligation to determine whether a potential list I customer had a legitimate need for the products. Moreover, Mr. Sayani's testimony indicates that Respondent did not change its practices. Indeed, Respondent's practices are fundamentally inconsistent with its obligations as a registrant, and are a prescription for wide-spread diversion. *Id., see also D & S Sales*, 71 FR at 37610. Respondent's unwillingness to reform them provides reason alone to conclude that it does not—and will not—maintain effective controls against diversion and that its registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(h).

Buttressing this finding is the evidence pertaining to the audit. As found above, the audit, which covered a six-month period, found that Respondent had massive shortages of several listed chemical products including 7640 sixty-count bottles of Head Up, 3656 sixty-count bottles of Max Brand, and 284 sixty-count bottles of Mini 2-Way Action.[32] *See* GX 31. In total, Respondent was short 11,580 sixty-count bottles of pseudoephedrine and combination ephedrine products, or nearly 695,000 dosage units. This was so notwithstanding that the DIs used 0 as the opening inventory for each of the products (the consequence of this is that if any product had, in fact, been on hand on the opening date of the audit, the audit would result in an undercount of the shortage), and that the time period was of limited duration.

Based on the ALJ's finding that its ''lack of an inventory system, alone, provides persuasive weight against Respondent's continued registration,'' ALJ at 30 n.6, Respondent argues that ''there is no requirement under any of the DEA rules to have an inventory system, and [that it] is * * * being asked to comply with something that is not in the DEA rules.'' Resp. Exceptions at 6. Respondent contends that it is ''being held to * * * unpublished DEA guidelines,'' and that this is ''a violation of due process * * * and equal protection guarantees.'' *Id.*

Respondent is correct that there is no regulation which explicitly requires that it maintain an inventory system. However, in enacting section 303(h), Congress made plain that in determining the public interest, the Attorney General was to consider the applicant's (and in a revocation/suspension proceeding, the registrant's) ''maintenance * * * of effective controls against diversion of listed chemicals into other than legitimate channels.'' 21 U.S.C. 823(h).

Moreover, in 1995, DEA promulgated 21 CFR 1309.71(a), which directed that ''[a]ll applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of List I chemicals.'' This regulation, which remains in effect, further explained that ''[i]n evaluating the effectiveness of security controls and procedures, the Administrator shall consider * * * [t]he adequacy of the registrant's or applicant's systems for monitoring the receipt, distribution, and disposition of List I chemicals in its operations.'' 21 CFR 1309.71(b)(8).

Federal law further requires that a registrant report ''any regulated transaction involving an extraordinary quantity of a listed chemical,'' 21 U.S.C. 830(b)(1)(A), and a ''regulated transaction'' is based on ''the quantitative threshold or the cumulative amount for multiple transactions within a calendar month.'' 21 CFR 1310.04(f). Federal law also requires a distributor to report to this Agency ''any unusual or excessive loss or disappearance of a listed chemical under the control of the regulated person.'' 21 U.S.C. 830(b)(1)(C). Accordingly, to satisfy 21 CFR 1309.71(b)(8), a registrant's recordkeeping must be sufficient so as to enable it to comply with its reporting obligations under Federal law.[33] *See Fotinopoulos*, 72 FR at 24605.

Here, Respondent has no satisfactory explanation as to the disposition of approximately 11,580 sixty-count bottles or 695,000 dosage units of listed chemical products. Whether the shortages are due to poor recordkeeping, theft, or some other reason, the magnitude of these shortages provides a further reason to conclude that Respondent does not maintain effective controls against diversion and that its continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 823(h).

Factor Four—Respondent's Past Experience in Distributing Listed Chemicals

Under this factor, the ALJ further concluded that Respondent made ''excessive sales of both list one chemical products and iodine'' that ''pose a risk to the public interest.'' ALJ at 32. While the ALJ found the testimony of Respondent's expert ''more persuasive'' than the Government's evidence on the expected sales level of list I chemical products, as she further explained, even the Respondent's expert witness ''concurred that some of the [sales of] Respondent's List I chemical products * * * were in excess of what would be expected.'' Id. at 33. While I adopt the ALJ's conclusions with respect to list I chemicals, I reject them with respect to iodine.

With respect to its distributions of iodine, the ALJ found that ''Respondent has knowingly distributed large amounts of 2% iodine, another methamphetamine precursor.'' ALJ at 32. In support of her conclusion, the ALJ relied on the testimony of Respondent's expert that there were ''five instances where the quantity [of iodine] purchased might be suspiciously high,'' Tr. 571, as well as on Mr. Sayani's testimony that he was aware that one of his customers was purchasing hundreds of bottles but that he thought the customer was distributing to other small retailers. *Id.* at 744; *see also* ALJ at 32.

The Government's own evidence establishes, however, that the 2% iodine product which Respondent sold ''is not regulated by law,'' GX 36B at 2, and the NPRM which announced the Agency's intent to regulated iodine tinctures containing more than 2.2 percent iodine noted that 2% iodine tincture products ''are sold at a wide variety of retail outlets and have household application as antiseptic and antimicrobial products.'' 71 FR 46146. The same NPRM also explained that the ''frequent diversion'' of two percent iodine tincture at clandestine laboratories ''has not [been] documented.'' *Id.* at 46149.

[32] Respondent also had substantial shortages of three other products. GX 31.

[33] Typically, this requires no more than maintaining the records that a registrant keeps in the normal course of business. *See, e.g.* , DEA, *Implementation of the Domestic Chemical Diversion Control Act of 1993*, 60 FR 32447, 32451 (1995) (noting ''that most of the information required by the regulations is already maintained in general business records for all transactions'').

Furthermore, DEA's regulations provide that two conditions must be met for a chemical mixture to be exempted from regulation. 21 CFR 1310.13(a). First, ''[t]he mixture [must be] formulated in such a way that it cannot be easily used in the illicit production of a controlled substance.'' *Id.* § 1310.13(a). Second, ''[t]he listed chemical or chemicals contained in the chemical mixture cannot be readily recovered.'' *Id.* § 1310.13(b). Given the criteria for exempting a chemical mixture from regulation, neither the ALJ nor the Government explained why large sales of 2% iodine tincture are, by themselves, enough to give rise to a reasonable belief that the chemical contained therein is likely to be diverted.

Here, there is no evidence that Respondent sold these products with knowledge that they would be diverted for use in the illicit manufacture of methamphetamine, and in any event, the Government's allegation that Respondent was selling excessive amounts of iodine tincture is not supported by substantial evidence. The Government's evidence is limited to the testimony of a diversion investigator that she had visited 100 convenience stores and had never found iodine tincture. Yet the Agency's NPRM noted that these products, which have several legitimate uses, are sold at ''a wide variety of retail outlets.'' 71 FR at 46146.

More importantly, even assuming that the investigator was specifically looking for iodine tincture at the convenience stores she visited, the testimony amounts to nothing more than anecdotal evidence. As such, it does not conclusively establish the extent to which these products are sold at convenience stores and the statistical improbability that Respondent's sales of these products were to meet legitimate demand. Indeed, the evidence stands in contrast to the quantum of the evidence the Government introduced regarding the expected sales levels of list I chemical products at convenience stores.[34] Accordingly, I conclude that Respondent's sales of iodine do not support a finding that its continued registration is inconsistent with the public interest.

On the other hand, Respondent's sales of list I chemical products clearly were excessive and support a finding that its continued registration is inconsistent with the public interest. Even assuming that the monthly expected sales figure of $173 for pseudoephedrine given by Respondent's expert is accurate, and that some stores might make a legitimate business decision to purchase a case quantity to reduce their costs, the evidence shows that Respondent repeatedly sold case quantities to multiple customers including the Coastal Food Mart, Chitra Inc.'s Quick Stop, the Phillips 66 Mart, the R & S Grocery, and the Stop In.

The evidence also shows that Respondent sold case quantities to two customers which gave the same address. For example, between January 6 and August 1, 2004, Respondent sold a total of eleven cases to the P & K Mini Mart and the Quick Stop/Tushar/BP, both of which used the same address. Moreover, between January 6 and September 5, 2004, it sold a total of fifteen cases to the DJ Food Mart and BJ Food Market #1, which gave their respective addresses as 15582 HWY 27 and 15582 HWY 27 North in Trion, Georgia.

With respect to the Coastal Food Mart, which purchased eight cases between January 21 and September 5, 2004, even Respondent's expert acknowledged that this store's purchases were many times the expected norm. Tr. 619–20. And as found above, several of Respondent's customers purchased even larger amounts of list I chemical products than did the Coastal Food Mart. As Respondent's expert allowed with respect to those customers who were repeatedly purchasing large quantities, ''maybe there's some nefarious practice involved here'' and the customers are ''doing something that * * * they shouldn't be doing.'' *Id.* 570.[35]

Respondent raises two arguments in response to the allegations that it sold excessive quantities of list I chemical products. First, it argues that given the nature and size of its business, it would be ''almost impossible to find'' the excessive sales. Resp. Prop. Findings at 15.

Second, it argues that is ''has not sold any restricted item in excess of the quantities authorized in the published rules and regulations * * * which show the threshold quantities of restricted items the wholesalers * * * are allowed to sell without * * * putting their DEA license at risk.'' *Id.* at 16. Relatedly, Respondent raises again a due process argument that ''[i]f the Government is proceeding on any basis other than Respondent having exceeded the sale quantity thresholds which the Government has specifically published (such as 'not in the public interest'), then the Government is proceeding under a rule or statute which is void for vagueness as it does not put Respondent on notice as to what specific action would be violative of [its] rules and regulations.'' *Id.* at 17–18.

As for the argument that it would be nearly impossible to detect excessive purchases, Respondent's expert acknowledged that a computer program could be written to detect such purchases. Tr. 648. Nor would it require more than minimal effort to call up a customer's account to determine the frequency and amounts of its purchases before selling additional amounts of the products to it.

Also unavailing is Respondent's contention that because it did not sell more than the threshold quantities, its registration cannot be revoked. Contrary to Respondent's understanding, selling under threshold amounts does not relieve a registrant from its obligation to taking necessary measures ''to determine the ultimate disposition of [its] products.'' *Rick's Picks*, 72 FR at 18278. The thresholds simply trigger additional recordkeeping and reporting requirements. As I explained in *Rick's Picks:*

> Congress's imposition of recordkeeping and reporting requirements for regulated transactions does not mean that one can engage in below-threshold transactions without any further obligation to determine whether the products are likely to be diverted. Indeed, DEA has found that products which have been distributed to non-traditional retailers in sub-threshold transactions are routinely diverted. Contrary to Respondent's view, the threshold provisions pertaining to regulated transactions do not create a safe harbor which allows a registrant to sell list I chemicals without any further duty to investigate how the products are being used.

Id. Cf. United States v. *Kim*, 449 F.3d 933, 944 (9th Cir. 2006) (''[T]he recording and reporting statutes establish no safe harbor from prosecution under [21 U.S.C.] 841(c)(2).''). I therefore reject Respondent's contention (as raised in both its Exceptions and Motion for Judgment as a Matter of Law) that this proceeding should be dismissed because it did not sell in excess of the thresholds.

Finally, there is no merit to Respondent's related contention that it has been denied fair ''notice as to what specific action would be violative of [DEA's] rules and regulations.'' Resp. Prop. Findings at 18. Contrary to

[34] Because 2% iodine tincture is not regulated, the Government's allegation that it engaged in regulated transactions which it failed to report as suspicious transactions is also rejected.

[35] As DEA has found in numerous other cases, where there is a pattern of distributions which are so large as to be statistically improbable to meet legitimate demand, a finding that the products have been diverted is warranted. *See Holloway Distributing*, 72 FR at 42125; *T. Young Associates, Inc.*, 71 FR 60567, 60572 (2006); *D & S Sales*, 71 FR at 37611; *Joy's Ideas*, 70 FR at 33198.

Respondent's view, the standards, which it was expected to conform to, were identifiable ''with ascertainable certainty'' by reviewing DEA's public pronouncements. *Trinity Broadcasting, Inc.*, v. *FCC*, 211 F.3d 618, 628 (D.C. Cir. 2000).

In section 304(a), Congress made clear that a registration is subject to revocation where a registrant ''has committed such acts as would render his registration * * * inconsistent with the public interest as determined under'' under section 303. 21 U.S.C. 824(a)(4). And in section 303(h), Congress clearly provided that one of the criteria for determining the public interest is whether a registrant maintains ''effective controls against diversion of listed chemicals into other than legitimate channels.'' *Id.* § 823(h)(1). The statute itself thus provides fair warning to a registrant that is must not sell to diverters.

Moreover, in several decisions which pre-dated nearly all of the listed chemical distributions discussed above, this Agency made clear that selling in quantities that greatly exceed legitimate demand for these products supports a finding of diversion and that such conduct can be the basis for the revocation of a registration. *See, e.g., Branex, Inc.,* 69 FR 8682, 8690–94 (2004) [36] (revoking registration noting that distributor's sales of pseudoephedrine to convenience stores greatly exceeded the expected sales range at such stores and supported a finding that the pseudoephedrine was likely diverted); *MDI Pharmaceuticals*, 68 FR 4233, 4238 (2003) (revoking registration on ground that ''firm distributed large quantities of pseudoephedrine tablets to smoke shops and * * * convenience stores in quantities that apparently exceeded legitimate demand for these products''); *Ace Wholesale & Trading Co.*, 67 FR 12574, 12576 (2002) (revoking registration on grounds that registrant ''was distributing large quantities of pseudoephedrine to [a convenience store] and other establishments that appeared far in excess of legitimate demand'').[37] In these decisions, all of which were also published on the Agency's Web site as well as in the **Federal Register**, DEA provided fair warning that Respondent's conduct in selling large quantities of listed chemicals could result in the revocation of its registration.

Respondent's argument rings hollow for another reason. In the first Show Cause Order, Respondent was put on notice that ''Max Brand products have been found on numerous occasions in situations related to the illicit manufacture of methamphetamine,'' Show Cause Order I, at 3; that the monthly expected sales range of pseudoephedrine products at convenience stores in Georgia ''averaged between $15 and $60,'' *id.* at 4; and that its sales of listed chemical products were ''wildly inconsistent with the expectation of sales'' by convenience stores. *Id.* at 5. Mr. Sayani even testified under oath that at the ''end of 2004, starting of 2005,'' and after receiving the Show Cause Order, he had stopped selling Max Brand products. Tr. 713. Respondent's records establish, however, that it continued to sell the products for months past the date when Mr. Sayani claimed it had stopped; it also shows numerous instances in which Respondent sold half-case quantities or larger for several months thereafter.[38] I thus reject Respondent's contention that it lacked fair warning that its excessive sales could be grounds for the revocation of its registration.

Accordingly, while Respondent was authorized to distribute list I chemicals for approximately six years, its experience is characterized by its frequent disregard of its obligation to protect against the diversion of these products. This conclusion provides an additional basis, which is sufficient by itself, to find that Respondent's continued registration is ''inconsistent with the public interest.'' 21 U.S.C. 823(h).

Factor Five—Such Other Factors as Are Relevant to and Consistent With Public Health and Safety

As found above, the illicit manufacture and abuse of methamphetamine have had pernicious effects on families and communities throughout the nation.[39] Cutting off the supply sources of methamphetamine traffickers is of critical importance in protecting the public from the devastation wreaked by this drug.

While listed chemical products containing both ephedrine and pseudoephedrine have legitimate medical uses, DEA orders have established that convenience stores, gas-stations, and other small retailers, constitute the non-traditional retail market for legitimate consumers of products containing these chemicals. *See, e.g., Tri-County Bait Distributors*, 71 FR 52160, 52161–62 (2006); *D & S Sales*, 71 FR at 37609; *Branex, Inc.*, 69 FR 8682, 8690–92 (2004). DEA has further found that there is a substantial risk of diversion of list I chemicals into the illicit manufacture of methamphetamine when these products are sold by non-traditional retailers. *See, e.g., Joy's Ideas*, 70 FR at 33199 (finding that the risk of diversion was ''real'' and ''substantial''); *Jay Enterprises, Inc.*, 70 FR 24620, 24621 (2005) (noting ''heightened risk of diversion'' if application to distribute to non-traditional retailers was granted). For this reason, DEA has repeatedly revoked the registrations and denied an application for registration when a registrant distributes (or an applicant proposes to distribute) listed chemicals to non-traditional retailers and other evidence (such as excessive sales, inadequate diversion controls, previous violations/criminal convictions or a lack of adequate experience) confirm that the registrant/applicant is unlikely to responsibly handle the products. *See Rick's Picks*, 72 FR at 18278–80; *John J. Fotinopoulos*, 72 FR at 24605–07; *Tri-County Bait Distributors*, 71 FR at 52163–64; *D & S Sales*, 71 FR at 37610–12; *Joy's Ideas*, 70 FR at 33197–99; *Xtreme Enterprises*, 67 FR 76195, 76197–98 (2002).

The record here likewise establishes a substantial nexus between the sale of non-traditional list I chemicals products and the diversion of these products into the illicit manufacture of

[36] The *Branex* decision was published in the **Federal Register** on February 25, 2004, before Respondent made many of the case quantity distributions.

[37] In addition, in publications such as the *Chemical Handler's Manual*, DEA explained that ''[i]t is fundamental for sound operations that handlers take reasonable measures to identify their customers, understand the normal and expected transactions typically conducted by those customers, and, consequently, identify those transactions conducted by their customers that are suspicious in nature.''*Chemical Handler's Manual* 15 (2002).

The *Chemical Handler's Manual* also sets forth numerous criteria for recognizing suspicious transactions including ''resell[ing] to non-traditional outlets for regulated OTC products, e.g., hair salons, head shops, drug paraphernalia stores, liquor stores, record stores, video shops, auto parts stores,'' and ''resell[ing] large volumes into the 'independent convenience store' market.'' *Id.* at 42. The manual also listed as relevant criterion ''[a]ny customer who asks for large bottle sizes, 60 count or higher,'' or ''buy[s] only the largest size available.'' *Id.*

[38] Relatedly, Mr. Sayani told the DI during one of the 2001 inspections that ''a typical sale'' would be two to three boxes containing 12 bottles; in the same conversation, the DI told Mr. Sayani that a sale of a case quantity would be suspicious. Tr. 330–31. Many of Respondent's sales were well in excess of a typical sale. Respondent thus not only ignored the DI's instruction, it also ignored its own understanding of the market. Moreover, at the various visits, Respondent was provided with a copy of several notices which explained that pseudoephedrine and combination ephedrine were being diverted into the illicit manufacture of methamphetamine.

[39] As found above, methamphetamine trafficking has increased substantially in Georgia and the adjacent States.

methamphetamine. According to the testimony of a DEA Special Agent, who had debriefed more than 200 individuals involved in the illicit manufacture of methamphetamine, convenience stores, gas stations and other small retailers were the primary and preferred source of pseudoephedrine and ephedrine that was used by smaller meth. labs. Tr. 56 & 59; *see also TNT Distributors*, 70 FR 12729, 12730 (2005) (noting Special Agent's testimony that ''80 to 90 percent of ephedrine and pseudoephedrine being used [in Tennessee] to manufacture methamphetamine was being obtained from convenience stores'').

The record establishes that Respondent's list I customer base was comprised primarily of the same type of establishments. More specifically, Respondent's list I customers included gas stations, convenience stores, dollar stores, liquor stores, beauty stores, gift shops, and some customers (such as those located at private residences) whose business was not even clear. As the ALJ observed ''[s]ome of these businesses did not even appear to be tangentially related to the legitimate sale of pseudoephedrine and ephedrine products.'' ALJ at 34. As the ALJ further noted, notwithstanding the substantial risk of diversion present when distributing to these establishments, as well as the testimony that non-traditional retailers were the primary supply source for illicit meth. cooks, Respondent offered no evidence that it ''would cease dealing with'' these establishments. *Id.*

Moreover, while Respondent disputed the amount of monthly sales of pseudoephedrine at convenience stores to meet legitimate demand, it did not challenge the Government's evidence that sales of non-prescription drugs account for only a small percentage of the total sales of convenience stores that handle the products. Nor did it offer any evidence to refute the Government's evidence that only a small number (approximately two in one thousand) of convenience store customers purchase a pseudoephedrine product. And even using the monthly expected sales figures put forth by its expert, as found above, Respondent repeatedly sold to multiple non-traditional retailers quantities of list I chemical products that greatly exceeded legitimate demand for these products.

Having concluded that the Government made out its *prima facie* case, the ALJ then turned to assessing whether Respondent had produced sufficient evidence that it would protect the public interest from the diversion of the products. *Id.* at 34. As the ALJ noted, Respondent did improve its physical security. *Id.* The ALJ also noted that Respondent had conducted ''some investigations into some of its customer's business identities.'' *Id.* Yet at the hearing, Mr. Sayani testified that he did not go to a new customer's store to verify whether it was a legitimate business and that a new customer's presentation of a tax identification number and business license provided sufficient proof of the customer's bona fides. Tr. 768–69. Mr. Sayani offered no testimony that Respondent was willing to change this practice.[40]

The ALJ nonetheless concluded that Respondent ''does demonstrate a willingness to comply with DEA directions'' because it did not handle list I chemical products at its Decatur location while its application was pending and at its Forest Park location after that registration was suspended. ALJ at 34–35. The ALJ also reasoned that Respondent ''stopped selling non-traditional listed chemical products in 2004, after the DEA served its first Order to Show Cause.'' *Id.* at 35.

Both the handling of a list I chemical product at an unregistered location and the distribution of a list I product out of a location with a suspended registration would, however, constitute felony offenses under Federal law. *See* 21 U.S.C. 841(f)(1); *id.* § 843(a)(9); *id.* § 844(a). Even if Respondent's compliance with these provisions is probative of its willingness to cooperate (a debatable proposition given that its non-compliance would expose it to substantial criminal penalties), the remaining basis for the ALJ's conclusion is not supported by the record.

As found above, Respondent continued selling non-traditional products—and made numerous large quantity transactions—well into April 2005, approximately five to six months after service of the first Show Cause Order. Indeed, Mr. Sayani's testimony regarding when Respondent stopped selling the products is clearly refuted by the documentary evidence. The weight of the evidence thus does not support the ALJ's conclusion that Respondent is willing to comply with DEA's direction.

In any event, notwithstanding her finding, the ALJ concluded that Respondent's ''cooperation is dwarfed by the significant risk of diversion posed to the public by * * * Respondent's continued sales of listed chemical products to [non-traditional retailers] without adequate sales records or customer verification.'' ALJ at 35. While Respondent contends that the ALJ ''ignore[d] the substantial remedial actions that [it] had taken to correct [the] problems of which'' it was notified, Resp. Exceptions at 6, the ALJ considered them and properly concluded that they only partially addressed the problems identified by the Agency. *See* ALJ at 35 (noting that Respondent has ''not provided sufficient evidence to convince [the Agency] that its future conduct would change to the degree necessary to eliminate the threat to the public interest'').

In short, Respondent offered no evidence of its willingness to change its practices for determining whether its customers are legitimate. It offered no evidence that it has in place systems to accurately account for the products it handles and to properly identify those customers who are purchasing excessive quantities.

Likewise, it has offered no credible evidence that it is willing to change its practices to limit its sales of these products. Its claim that it stopped selling the products shortly after service of the first Show Cause Order, is contradicted by the documentary evidence. Moreover, its argument that the thresholds establish the ''quantities of restricted items the wholesalers * * * are allowed to sell without * * * putting their DEA license at risk, [and] are what both the Government and the public are bound to abide by,'' Resp. Prop. Findings at 16—a theme which is repeated throughout its brief—makes plain its view that it can continue to sell up to the thresholds with no obligation to limit its distributions to those establishments at which there is only limited consumer demand for these products for their lawful use. Because this view is fundamentally inconsistent with a distributor's obligation under the CSA, I conclude that Respondent's registration ''is inconsistent with the public interest.'' 21 U.S.C. 823(h).[41]

[40] There was also evidence that on one occasion, Respondent's attorney reported an incident involving an individual who, in attempting to purchase products, admitted to Mr. Sayani that he did not have a store, and then showed Mr. Sayani a van full of products which he had purchased from a competitor of Respondent. RX 29. While the letter provided information regarding the practices of Respondent's competition, it did not report the name of the individual or give the license plate number (or a description) of the van. *See id.*

[41] Respondent also contends that ''the Government had no reasonable justification in summarily proceeding to seize his products and summarily revoke his license without affording him a due process right to a hearing.'' *Id.* at 20. Respondent ignores, however, that section 304(d) of the CSA expressly authorizes the suspension of ''any registration simultaneously with the institution of proceedings under this section, in cases where he finds that there is an imminent danger to the public health and safety.'' 21 U.S.C. 824(d).

Continued

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(h) & 824(a), as well as 28 CFR 0.100(b) & 0.104, I order that DEA Certificate of Registration, 040450SLY, issued to Sunny Wholesale, Inc., 120 Forest Parkway, Forest Park, Georgia, be, and it hereby is, revoked, and that its application to renew this registration be, and it hereby is, denied. I further order that Sunny Wholesale, Inc.'s, application for a DEA Certificate Registration at 2935 N. Decatur Road, Suite C, Decatur, Georgia, be, and it hereby is, denied. These orders are effective November 3, 2008.

Dated: September 26, 2008.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E8–23395 Filed 10–2–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 26, 2008.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Amy Hobby on 202–693–4553 (this is not a toll-free number)/email: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316 / Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension without change of an existing OMB Control Number.

Title of Collection: Requirements of a Bona Fide Thrift or Savings Plan (29 CFR Part 547) and Requirements of a Bona Fide Profit-Sharing Plan or Trust (29 CFR Part 549).

OMB Control Number: 1215–0119.

Affected Public: Businesses or other for-profits, Farms, Not-for-profit institutions.

Total Estimated Number of Respondents: 844,000.

Total Estimated Annual Burden Hours: 352.

Total Estimated Annual Costs Burden: $0.

Description: This information collection applies to employers claiming the overtime exemption available under section 7(e)(3)(b) of the Fair Labor Standards Act. Specifically, in calculating an employee's regular rate of pay, an employer need not include contributions made to a bona fide thrift or savings plan or a bona fide profit-sharing plan or trust—as defined in 29 CFR Parts 547 and 549. Employers are required to communicate, or make available to the employees, the terms of the bona fide thrift or savings plan and bona fide profit-sharing plan or trust, and retain certain records. For additional information, see related notice published at 73 FR 39725 on July 10, 2008.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E8–23101 Filed 10–2–08; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,583; TA–W–62,583A]

PeopLoungers, Inc., Nettleton, MS, and PeopLoungers, Inc., Mantachie, MS; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 2, 2008, applicable to workers of PeopLoungers, Inc., Nettleton, Mississippi. The notice was published in the **Federal Register** on April 17, 2008 (73 FR 20954).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of furniture.

New information provided by the company official shows that after the worker group was certified eligible to apply for adjustment assistance, the subject firm relocated remaining workers and production from Nettleton, Mississippi to Mantachie, Mississippi.

Based on this finding, the Department is amending the certification to include workers separated from the Mantachie, Mississippi location of PeopLoungers, Inc.

Respondent does not argue that the statute is unconstitutional. Nor could it, as the Supreme Court has repeatedly upheld the use of post-deprivation process in emergency situations. *See, e.g., Gilbert* v. *Homar,* 520 U.S. 924 (1997). Moreover, in this case, the evidence of Respondent's continued large sales of listed chemical products, even after being served with the first Show Cause Order, supports the finding that Respondent's continued registration during the pendency of the proceeding posed an imminent danger to public health and safety. Respondent could also have sought review of the suspension in a ''court of competent jurisdiction.'' 21 U.S.C. 824(d).

Finally, Respondent asserts that ''the effect of the DEA's arbitrary actions [in its] case [is] to discriminate against him because he is a legal alien'' in violation of his right to equal protection of the laws. Resp. Prop. Findings at 25. Respondent does not, however, contend that the Agency is intentionally discriminating against its owner, *see Hernandez* v. *New York,* 500 U.S. 352, 359–60 (1991), a requirement for stating a claim under the Equal Protection Clause, and in any event, it has produced no evidence to support its claim. Respondent is just one of many list I chemical distributors whose registrations have been revoked for committing acts inconsistent with the public interest.

The amended notice applicable to TA–W–62,583 is hereby issued as follows:

''All workers of Peoploungers, Inc., Nettleton, Mississippi (TA–W–62,583) and PeopLoungers, Inc., Mantachie, Mississippi who became totally or partially separated from employment on or after December 18, 2006, through April 4, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC, this 23rd day of September 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–23298 Filed 10–2–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,236; TA–W–63,236A]

Avaya, Inc., Unified Communications Division, Information Solutions Organization, Westminster, CO, Including Employees of Avaya, Inc., Unified Communications Division, Information Solutions Organization Westminster, CO, Working in Milpitas, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 15, 2008, applicable to workers of Avaya, Inc., Unified Communications Division, Information Solutions Organization, Westminster, Colorado. The notice was published in the **Federal Register** on May 29, 2008 (73 FR 30977).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of master technical manuals, other information products and localized software.

New information shows that worker separations have occurred involving employees working in support of the Westminster, Colorado facility of the subject firm located in Milpitas, California. Ms. Jennifer Allen and Ms. Shirley Tsang provided a variety of services supporting the production of master technical manuals, other information products and localized software at the Westminster, Colorado location of the subject firm. The Department has determined that Ms. Jennifer Allen and Ms. Shirley Tsang were sufficiently under the control of the Westminster, Colorado location to be covered under this certification.

Based on these findings, the Department is amending this certification to include employees in support of the firm's Westminster, Colorado facility located in Milpitas, California.

The intent of the Department's certification is to include all workers of Avaya, Inc., Unified Communications Division, Information Solutions Organization, Westminster, Colorado who were adversely affected by increased imports following a shift in production to India and Czech Republic.

The amended notice applicable to TA–W–63,236 is hereby issued as follows:

All workers of Avaya, Inc., Unified Communications Division, Information Solutions Organization, Westminster, Colorado (TA–W–63,236) including employees in support of Avaya, Inc., Unified Communications Division, Information Solutions Organization, Westminster, Colorado located in Milpitas, California (TA–W–63,236A), who became totally or partially separated from employment on or after April 22, 2007, through May 15, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 23rd day of September 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–23299 Filed 10–2–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,421]

Kimble Chase Life Science & Research Products LLC, Formerly Known as Kimble Kontes, Vineland, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 16, 2008, applicable to workers of Kimble Chase, LLC, Vineland, New Jersey. The notice was published in the **Federal Register** on July 14, 2008 (73 FR 40388).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of glassware for scientific use.

New information shows the complete name of the subject firm should read Kimble Chase Life Science & Research Products LLC. Information also shows that before July 1, 2007, the subject firm was formerly known as Kimble Kontes. Some of the workers wages at the subject firm are being reported under a separate Unemployment Insurance (UI) tax account for Kimble Chase Life Science & Research Products LLC, formerly known as Kimble Kontes.

Accordingly, the Department is amending this certification to properly reflect these matters.

The intent of the Department's certification is to include all workers of Kimble Chase Life Science & Research Products LLC, formerly known as Kimble Kontes who were adversely affected by increased imports following a shift in production to Mexico.

The amended notice applicable to TA–W–63,421 is hereby issued as follows:

All workers of Kimble Chase Life Science & Research Products LLC, formerly known as Kimble Kontes, Vineland, New Jersey, who became totally or partially separated from employment on or after May 19, 2007, through June 16, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of September 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–23300 Filed 10–2–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications (SGA) To Fund Demonstration Projects

Announcement Type: New, Notice of Solicitation for Grant Applications.

Funding Opportunity Number: SGA/DFA PY 08–08.

Catalog of Federal Assistance Number: 17.261.

DATES: *Key Dates:* The closing date for receipt of applications under this announcement is November 17, 2008. Applications must be received at the address below no later than 4:30 p.m. (Eastern Time). Application and submission information is explained in detail in Part IV of this SGA. A Webinar for prospective applicants will be held for this grant competition approximately 30 days from date of publication in the **Federal Register** . Access information for the Webinar will be posted on the U.S. Department of Labor's, Employment and Training Administration Web site at: *http://www.workforce3one.org.*

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA) announces the availability of approximately $5 million to fund demonstration grants that target the employment and training needs of young parents. The Young Parents Demonstration program is to provide educational and occupational skills training leading to family economic self-sufficiency to both mothers and fathers, and expectant mothers ages 16 to 24. Projects funded will be encouraged to serve young parents in high-risk categories, including those who are court-involved, in the child welfare or foster care system, homeless, or victims of child abuse.

This solicitation provides background information and describes the application submission requirements, outlines the process that eligible entities must use to apply for funds covered by this solicitation, and details how grantees will be selected.

ADDRESSES: Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Eileen Banks, Reference SGA/DFA PY 08–08, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Facsimile applications will not be accepted. Information about applying online can be found in Part IV. Section C. of this document. Applicants are advised that mail delivery in the Washington, DC area may be delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address.

SUPPLEMENTARY INFORMATION: This solicitation consists of eight parts:

Part I provides background information.
Part II describes award information.
Part III describes eligibility information.
Part IV describes the application and submission process.
Part V describes the applications review process.
Part VI contains award administration information.
Part VII contains DOL agency contact information.
Part VIII lists additional resources of interest to applicants.

Part I. Background Information

1. Background

Although the rate has declined by one-third since the early 1990's, the United States continues to have one of the highest rates of teen pregnancy and teen births among industrialized nations. In 2006, there were nearly 420,000 births to adolescents under the age of 20.

Early pregnancy and childbearing is closely linked to a host of critical social issues reflecting both the disadvantaged backgrounds of most teen parents and the consequences of early childbearing. Teenage mothers and their children experience more negative outcomes than mothers who delay childbearing until they are older. Children of teen mothers are more likely to be born prematurely and at low birth weight, to suffer higher rates of neglect and abuse, to perform poorly in school, and to become teen parents themselves. Teen mothers are more likely to drop out of school, live in poverty, have lower overall educational attainment, and be dependent on public assistance at some point in their lives.

Teens in foster care or transitioning out of foster care are at a greater risk of becoming teen parents: They are two and a half times more likely than their peers not in foster care to experience a pregnancy by age 19. Many foster youth lack the support system a stable family can provide; the results are pregnant and parenting teens exiting foster care with the additional challenge of trying to support themselves in addition to raising a child.

Teen childbearing is estimated to cost taxpayers at least $9.1 billion each year, including public sector health care costs, increased child welfare costs, and lost tax revenue. Two-thirds of families begun by a young unmarried mother are low-income and 52 percent of all mothers on welfare had their first child as a teenager. Current federal welfare law places a lifetime limit on the amount of financial assistance provided to parents with children and is increasingly encouraging a work-first approach; however, many teen parents lack the skills and social support to achieve economic self-sufficiency.

Teen pregnancy is the number one reason young women drop out of school, and although our society has become better at addressing this problem, the logistics of parenting and completing an education remain a challenge for teen parents, schools, government, and community and faith-based organizations. Even more challenging is the ever increasing need for additional education and training to enter unsubsidized employment and become self-sufficient, as teen mothers are less likely to attend college than women who delay childbearing. Reduced educational attainment of teen mothers has an impact on workforce participation and subsequent earnings. Teen mothers also tend to have more children over their lifetime, which has a strong negative effect on their labor force participation. With less work experience prior to parenthood, teen mothers have difficulty competing in the labor market. Research shows that teen parents have lower career aspirations, lower occupational prestige, and less satisfaction with their job and the progress of their career.

Although most of the focus of teenage pregnancy and parenting is on the mother, fathers of children born to teens also experience the educational and financial effects of early childbearing. Teen fathers tend to complete fewer years of education and are less likely to receive a high school diploma or GED. The annual earnings of teen fathers are 10–15 percent less than for men who do not have children during their teen years.[1]

As an outgrowth of high teen pregnancy rates, programs aimed at pregnancy prevention and at fostering parenting skills for adolescents with children have increased to advance the well-being and success of adolescent parents. However, research indicates programs aimed at teen mothers show modest, if any, gains in employment and earnings and many of these gains do not last. Barriers to education and employment include unstable housing, lack of suitable child care arrangements, unstable relationships, alcohol and drug

[1] Berglas, Nancy; Brindis and Cohen, ''Adolescent Pregnancy and Childbearing in California.'' California Research Bureau. June, 2003. Sacramento, CA. Page 25.

use, mental health issues, and domestic violence.

Innovative, flexible programs that facilitate the long-term self-sufficiency of young parents and build their parenting capacity must combine academics, work experience, intensive personal attention and support services. Practitioners agree that best practices include the provision of quality education and training, case management, family support services, health services, flexible child care, life skills education, and programs that increase a father's involvement. Complete success involves the ability of a teenage parent to enter the labor market and become self-sufficient. Many of these programs do not have the resources to provide comprehensive services and must stop short of providing employment and occupational skills training. Such training may not be available within a reasonable distance or factors such as child care or transportation may prohibit active participation.

2. Prior Research on Young Parent's Programs

There are literally hundreds of programs for teen parents to complete their schooling. In 1999, the National Institute on Early Childhood Development and Education profiled 43 programs for pregnant and parenting teens in a variety of settings including public schools, alternative schools, community-based facilities, and medical facilities. The focus on education, training, and employability reflects a recognition that in order to improve the long-term economic self-sufficiency of young parents and their families, it is critical that they obtain a high school diploma or equivalency and pursue additional education or job training that can improve employment and earnings in the long run.

In the welfare reforms of the early 1990's, teen parents were required to remain in school and most were expected to live at home with parents or relatives. Due to this focus on school completion, few programs for teen mothers have been rigorously evaluated in terms of employment and earnings outcomes since the 1990's, although the findings from the early studies remain informative. Information about some of these studies is listed below.

New Chance

The New Chance program was a national research and demonstration project in the mid 1980's that provided comprehensive education, training, and other services intended to improve the prospects and well-being of low-income mothers and their children. The program's eligibility criteria were designed to assure that the research sample represented populations that were central to the welfare reform debates of the time: families headed by young mothers who had their first child as teenagers, were high school dropouts, and were receiving Aid for Families with Dependent Children (AFDC). One of the program's distinguishing features was its explicit two-generational focus on both mothers and children. The program substantially increased young parents' participation in education and skills training. Eighteen to 19 year old and 20 to 22 year old project participants were more likely to earn a high school diploma or GED than their counterparts in the control group.

Teenage Parent Demonstration (TPD)

The TPD operated in Camden and Newark, New Jersey and the south side of Chicago from 1987 to 1991. All teens who applied for AFDC during the demonstration period in these sites and who were randomly assigned to the demonstration program were required to participate in education, job training, or employment-related activities, as appropriate, or be sanctioned until they did participate. The sites paid for or provided child care, transportation, and other services so that such needs were not a barrier to participation in required activities. Each teen was assigned to a case manager who developed a self-sufficiency plan, guided the teen to needed services, and monitored the teen's progress in required activities. The sites provided initial workshops and other services to prepare the teens for later education, training, and employment-related activities. Program costs were modest, averaging $2,200 per year per participant (including community-provided services, such as alternative educational services, but neither included AFDC payments nor the cost of regular high school attendance).

Some of the sites had positive employment and earnings results initially, but these results decayed because of subsequent pregnancy, insufficient child care and other services, and low skills. The evaluation of the TPD offers important lessons for state and local agencies that are implementing and have implemented the teenage parent provisions of Temporary Assistance for Needy Families. The highlights of the research were that mandatory participation and needed support services can be implemented successfully for teen parents on a large scale and at reasonable cost. Linking cash assistance to program participation increases the level of self-sufficiency activities when the participation is mandatory. TPD increased rates of school attendance, job training, and employment while the programs were operating. The increases faded after the end of the program.

Learning, Earning and Parenting Program (LEAP)

The LEAP Program, conducted from 1989 to 1997, was designed to promote school attendance of pregnant and parenting teens on welfare, with the ultimate goal of producing improved employment outcomes and reductions in welfare dependence. LEAP provided financial incentives for educational achievement, case management, and support services such as child care and transportation assistance. Experimental evaluations showed that participation in LEAP increased school enrollment, school attendance, and college enrollment, and decreased welfare participation. For the subgroups of participants who were enrolled in school at the time of program enrollment, there were also significant positive impacts on high school graduation and GED attainment rates as well as employment-related outcomes. Ohio's LEAP increased teenage parents' school and GED program attendance significantly during the first year after they entered the program. The program also increased the rates at which teen parents completed 9th, 10th, and 11th grade during the first three years after program entry.

Parents' Fair Share (PFS)

The PFS, a national demonstration project authorized by the Family Support Act of 1988, was one of the first programs providing targeted assistance to low-income fathers who were behind on child support payments. The PFS evaluation studied 5,500 fathers who were randomly assigned to a PFS group or control group at each of seven sites from 1994 to 1996. Some of the key findings were that PFS increased employment and earnings for the least-employable men and encouraged some fathers, particularly those who were least involved initially, to take a more active parenting role. Also, men referred to the PFS program paid more child support than men in the control group.

Partners for Fragile Families (PFF)

Sponsored by the Department of Health and Human Services and the Ford Foundation, the PFF demonstration was initially developed in 1996 with planning grants to 16 sites. From 2000 to 2003, 13 of these sites operated in the demonstration phase.

PFF targeted young fathers (age 16–25) who had not yet established paternity or had extensive involvement with the child support enforcement system. The demonstration also included coordinated technical assistance (TA) and program development from the National Partnership for Community Leadership, a nonprofit provider of TA to community-based organizations and public agencies serving young fathers and fragile families. Some of the key findings were that the participants' earnings improved over time but were still low ($2,470 earnings per quarter one year after enrollment) and that the number of child support orders and the number and size of child support payments by participants increased over time.

3. The Young Parents Demonstration

The Fiscal Year 2008 Department of Labor Appropriations Act provides for approximately $5 million in Workforce Investment Act (WIA) Pilot, Demonstration and Research funds to conduct a new demonstration program of competitive grants to address the employment and training needs of young parents. The Young Parents Demonstration program is to provide educational and occupational skills training leading to family economic self-sufficiency to both mothers and fathers, and expectant mothers ages 16 to 24. Projects funded are to serve young parents including, as applicable, those in high-risk categories such as victims of child abuse, children of incarcerated parents, court-involved youth, youth at risk of court involvement, homeless and runaway youth, Indian and Native American youth, migrant youth, youth in or aging out of foster care, and youth with disabilities.

To ensure rigorous, valid results from the Young Parents Demonstration, each grantee must agree to participate in an innovative random assignment technique called a ''bump-up'' experiment. A ''bump-up'' experiment is a random assignment experiment [2] that provides an additional level of services above and beyond what exists in the current environment (the bump). Project participants have a 50/50 chance of receiving the additional level of services. Those participants assigned to the treatment group would get the additional services while participants assigned to the control group would receive the existing services offered by the grantee. Individuals assigned to the control group would not be harmed or denied services under this design. Please note that submissions that do not propose a ''bump-up'' experiment will be deemed non-responsive to this solicitation and will not be considered.

ETA encourages applicants who are targeting disconnected populations to partner with networks of faith and community-based organizations. Faith and community-based organizations have valuable expertise in successful strategies for working with disconnected populations and can provide outreach and wrap around support services as needed. For applicants choosing to partner with faith and community-based organizations, please visit *http://www.dol.gov/cfbci/accesspoints.htm* for specific mechanisms and strategies for integrating these organizations into the proposal.

4. Necessary Project Components

A. Each applicant must currently be operating a program with the following required components:

- Education, Training, and Employment Strategies—this component is focused on providing young parents with skills and credentials relevant to the industries or occupations in demand in the local labor market.
- Mentoring—this component is aimed at providing life skills and ongoing support to young parents. Mentoring can be defined as informal activities, such as one-on-one mentoring or group mentoring, or formal activities, such as home visitation. ETA requires that a faith-based or community-based organization experienced in providing social services to young parents or in operating mentoring programs will have the lead in this component of the program. The mentoring component should include a period of mentoring and follow-up that is no less than 18 months in duration and longer if possible.
- Case Management—Case management should include the identification, assessment, and enrollment of young parents in the project and the development of a personalized service strategy that may include personal, educational, or employment-related supports and the identification of appropriate supportive services. Case managers should have a central role in ensuring that project participants receive all of the necessary and appropriate services to overcome any barriers to full project participation. Case management includes: follow-up and retention services intended to sustain and advance the gains made in education and employment outcomes; individualized, consistent follow-up after training and during the retention period for at least one year; and/or intensive follow-up and retention services such as home visits or employer visits rather than periodic phone calls.
- Supportive Services—this component is aimed at reducing barriers to stable participation in education and employment, which may include child care assistance, transportation assistance, mental or physical health care, parenting education classes, work-based stipends, or other efforts.

B. This grant will provide an opportunity for a grantee to supplement their existing program (as described in section A above). The grant must provide a *new*, persistent service intervention above and beyond the grantee's existing menu of services (i.e. a ''bump-up'' initiative). The grant can be used to expand initiatives under the education, employment, and training component or the mentoring component, but NOT the case management or supportive services components. The ''bump-up'' initiative must not consist of services that could otherwise reasonably be provided by an existing partner.

C. The following is a list of examples of program services or models for specific components that would qualify for the ''bump-up.'' Please note that case management and supportive services are not eligible components for the additional bump-up. However, applicants are free to include in their proposed design services or models other than those provided here.

Education, Training, and Employment

- Work with an educational institution to develop a vocational training program which would encompass the flexibility needed by pregnant/parenting young adults.
- Provide alternative education options such as credit retrieval or GED completion.
- Provide assistance with transition to post-secondary education at a two-year or four-year institution.
- Coordinate with employers to identify career ladders, establish training needs, develop employer-based training, and/or hire individuals upon completion of the training.

[2] The major purpose of this experiment is to measure *the difference* that the program intervention makes relative to what would have happened—either better or worse—without it (counterfactual). The presence of this ''counterfactual'' world, or world without the presence of the intervention, makes it possible to conduct rigorous studies of pilots, demonstrations, and existing programs. Random assignment experiments provide the best counterfactuals. These studies deliberately exclude some members of the group from receiving an intervention in order to create and observe a ''world without the intervention.''

• Work with employers to develop internships specifically for this population which would allow flexibility to accommodate child care or pre-natal care.

• Increase employment opportunities through the addition of Job Developer/Specialist positions that work closely with the local One-Stop Career Center staff to identify job opportunities for young parents.

• Provide flexible employment/training scheduling such as split shifts, night work, or evening classes to ensure continuity of child care.

Mentoring

• Provide individualized, consistent mentoring for participants, with an added emphasis on participants who are enrolled in off-site activities.

• Work with employers to develop a workplace mentoring program to assist expectant mothers and/or young parents in retaining employment and advancing their careers.

• Work with educational entities to develop mentoring programs to assist expectant mothers and/or young parents in remaining engaged in and complete the education and training program.

• Provide a comprehensive mentoring program that addresses each of three types of mentoring strategies: Personal Development Mentoring which educates and supports youth during times of personal or social stress and provides guidance for decision making; Educational or Academic Mentoring which helps a student improve their overall academic achievement; and Career Mentoring which helps the youth develop the necessary skills to enter or continue on a career pathway.

• An example of a program with effective mentoring strategies includes:

• Ready 4 Work—Ready4Work was a three-year, $25 million pilot program designed to assist men and women returning from incarceration through faith-based and community-based organizations. Over 60 percent of Ready4Work participants received mentoring as part of their services. Participants who met with a mentor at least once showed stronger outcomes than those who did not participate in mentoring. Information on this program can be found at *http://www.dol.gov/cfbci/ready4.htm*.

• Information on starting mentorship programs is available at the MENTOR/National Mentoring Partnership Web site at *http://www.mentoring.org/*, including their guide *Elements of Effective Practice* at *http://www.mentoring.org/downloads/mentoring_411.pdf* and their tool kit *How to Build a Successful Mentoring Program Using the Elements of Effective Practice* at *http://www.mentoring.org/downloads/mentoring_413.pdf*.

Part II. Award Information

1. Award Amount

ETA anticipates awarding between 5–7 grants under this solicitation, with individual grants ranging in value from $500,000 to $1 million. However, this does not preclude ETA from funding grants at either a lower or higher amount, or funding a smaller or larger number of projects, based on the type and the number of quality submissions. Applicants are encouraged to submit budgets for quality projects at whatever funding level is appropriate for their project.

2. Period of Performance

The period of grant performance will be up to 36 months from the date of execution of the grant documents. This performance period shall include all necessary implementation and start-up activities, participant follow-up for performance outcomes, and grant close-out activities. ETA may elect to exercise its option to award no-cost extensions to grants for an additional period, based on the success of the program and other relevant factors, if the grantee requests, and provides a significant justification for, such an extension.

3. Matching Resources

Under this solicitation, matching or leveraged resources are not required. The applicant may provide leveraged resources from key entities to strengthen the service program offered to project participants. For applicants who choose to leverage resources, please include the following information in the technical proposal: (1) The total amount leveraged from federal sources; (2) the total amount leveraged from non-federal sources; (3) the partners contributing the resources; and (4) the projected activities, broken out by the source of the leveraged resource (federal or nonfederal), to be implemented utilizing these resources. Applicants should address leveraged resources (as applicable) in the technical proposal but should not reflect the leveraged resources on the SF–424A form.

4. Funding Restrictions

Determinations of allowable costs will be made in accordance with the applicable federal cost principles. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable federal cost principles or other conditions contained in the grant. Applicants will not be entitled to reimbursement of pre-award costs.

Limitations on Cost Per Participant. Since training costs may vary considerably depending on required skills and competencies, flexibility will be provided on cost per participant. However, applications for funding will be reviewed to determine if the cost of the training is appropriate and will produce the outcomes identified. Applicants should demonstrate that the proposed cost per participant is aligned with existing price structures for similar training in the local area or other areas with similar characteristics. When calculating cost per participant, applicants must distinguish between non-training and training costs utilizing grant funds.

Indirect Costs. As specified in the Office of Management and Budget (OMB) Circular Cost Principles, indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular cost objective. An indirect cost rate (ICR) is required when an organization operates under more than one grant or other activity whether federally-assisted or not. Organizations must use the ICR supplied by the cognizant federal agency. If an organization requires a new ICR or has a pending ICR, the Grant Officer will award a temporary billing rate for 90 days until a provisional rate can be issued. This rate is based on the fact that an organization has not established an ICR agreement. Within this 90 day period, the organization must submit an acceptable indirect cost proposal to their Federal cognizant agency to obtain a provisional ICR.

Administrative Costs. An entity that receives a grant under this solicitation may not use more than 10 percent of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs could be both direct and indirect costs and are defined at 20 CFR 667.220. Administrative costs do not need to be identified separately from program costs on the Standard Form 424A Budget Information Form.

Administrative costs should be discussed in the budget narrative and tracked through the grantee's accounting system. To claim any administrative costs that are also indirect costs, the applicant must obtain an indirect cost rate agreement from its Federal cognizant agency as specified above.

Use of Funds for Supportive Services. Grant funds under this solicitation may not be used to provide supportive services, such as transportation and

childcare, including funds provided through stipends for such purposes.

Salary and Bonus Limitations. None of the funds appropriated in Public Law 109–149, Public Law 110–5, or prior Acts under the heading 'Employment and Training' that are available for expenditure on or after June 15, 2006, shall be used by a recipient or sub-recipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 109–149. This limitation shall not apply to vendors providing goods and services as defined in OMB Circular A–133. See Training and Employment Guidance Letter number 5–06 for further clarification: *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2262.*

Legal Rules Pertaining to Inherently Religious Activities by Organizations that Receive Federal Financial Assistance. Direct Federal grants, sub-awards, or contracts under this program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services supported with DOL financial assistance under this program. Neutral, secular criteria that neither favor nor disfavor religion must be employed in the selection of grant and sub-grant recipients. In addition, under the Workforce Investment Act of 1998 and DOL regulations implementing the Workforce Investment Act, a recipient may not use direct Federal assistance to train a participant in religious activities, or employ participants to construct, operate, or maintain any part of a facility that is used or to be used for religious instruction or worship. See 29 CFR 37.6(f). Under WIA, ''no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972 and the Religious Freedom Restoration Act of 1993), national origin, age, disability, or political affiliation or belief.'' Regulations pertaining to the Equal Treatment for Faith-Based Organizations, which includes the prohibition against supporting inherently religious activities with direct DOL financial assistance, can be found at 29 CFR part 2, Subpart D. Provisions relating to the use of indirect support (such as vouchers) are at 29 CFR 2.33(c) and 20 CFR 667.266.

A faith-based organization receiving federal financial assistance retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs. For example, a faith-based organization may use space in its facilities to provide secular programs or services supported with Federal financial assistance without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization that receives Federal financial assistance retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents in accordance with all program requirements, statutes, and other applicable requirements governing the conduct of DOL funded activities.

The Department notes that the Religious Freedom Restoration Act (RFRA) , 42 U.S.C. sec. 2000bb, applies to all Federal law and its implementation. If your organization is a faith-based organization that makes hiring decisions on the basis of religious belief, it may be entitled to receive Federal financial assistance under Title I of the Workforce Investment Act and maintain that hiring practice even though Section 188 of the Workforce Investment Act contains a general ban on religious discrimination in employment. If you are awarded a grant, you will be provided with information on how to request such an exemption.

Faith-based and community organizations may reference ''Transforming Partnerships: How to Apply the U.S. Department of Labor's Equal Treatment and Religion-Related Regulations to Public-Private Partnerships'' at: *http://www.workforce3one.org/public/_shared/detail.cfm?id=5566&simple=false*.

Intellectual Property Rights. The Federal Government reserves a paid-up, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for federal purposes: (i) The copyright in all products developed under the grant, including a subgrant or contract under the grant or subgrant; and (ii) any rights to copyright to which the grantee, subgrantee or a contractor purchases ownership under an award (including but not limited to curricula, training models, technical assistance products, and any related materials). Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise. Federal funds may not be used to pay any royalty or licensing fee associated with such copyrighted material, although they may be used to pay costs for obtaining a copy which are limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with grant funds, including intellectual property, these revenues are program income. Program income is added to the grant and must be expended for allowable grant activities.

Part III. Eligibility Information

1. Eligible Applicants

This SGA intends to encourage new and continuing partnerships between: The publicly funded workforce investment system; representatives from business, industry, and economic development; and the continuum of education.

In order to be eligible for consideration under this solicitation, the applicant must be either:

- An accredited educational institution in partnership with a Workforce Investment Board;
- A non-profit provider of workforce system services determined to be tax exempt under section 501(c) of the Internal Revenue Code in partnership with a Workforce Investment Board. Please note that 501(c)(4) organizations which engage in lobbying activities are not eligible applicants under this solicitation;
- A One-Stop Career Center as established under Section 121 of WIA, [29 U.S.C. 2841], in partnership with a state or local Workforce Investment Board. The eligible applicant for One-Stop Career Centers is the One-Stop Operator, as defined under Section 121(d) of WIA [29 U.S.C. 2841(d)], on behalf of the One-Stop Career Center;
- An employer or industry association in partnership with a Workforce Investment Board; or
- A private, for-profit organization in partnership with a Workforce Investment Board.

Applicants must have a letter of commitment from the participating Workforce Investment Board. Please note that applications without a letter of commitment from a Workforce Investment Board will be considered non-responsive and will not be reviewed. Please note that each applicant must currently be operating a program with the required components as stated in Part I., Section 4 of the solicitation.

2. Participant Eligibility Requirements

Eligible Participants. The grants must be used to serve young parents (both mothers and fathers and in-school and out-of-school young parents) and expectant mothers ages 16 to 24, including those in high-risk categories such as victims of child abuse, children of incarcerated parents, court-involved youth, youth at risk of court involvement, homeless and runaway youth, Indian and Native American youth, migrant youth, youth in or aging out of foster care, and youth with disabilities. For the purposes of this SGA, in-school young parents are defined as individuals that are enrolled in a secondary or post-secondary institution either full or part-time at the time of participating in the young parent demonstration project proposed.

Furthermore, given that out-of-school expectant mothers and out-of-school young parents are more difficult to serve and may not have the opportunity to receive the extensive array of services that is available to in-school young parents, ten additional points will be awarded to applicants who primarily serve out-of-school youth.

Veterans Priority. The Jobs for Veterans Act (Pub. L. 107–288) provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the Department of Labor. In circumstances where a grantee must choose between two equally qualified candidates for training, one of whom is a veteran, the Jobs for Veterans Act requires that the grantee give the veteran priority of service by admitting him or her into the program. Please note that, to obtain priority of service, a veteran must meet the program's eligibility requirements. ETA Training and Employment Guidance Letter (TEGL) No. 5–03 (September 16, 2003) provides general guidance on the scope of the Job for Veterans Act and its effect on current employment and training programs. TEGL No. 5–03, along with additional guidance, is available at the Jobs for Veterans Priority of Service Web site: *http://www.doleta.gov/programs/vets.*

Part IV. Application and Submission Process

A. Address to Request Application Package

This SGA contains all of the information and links to forms needed to apply for grant funding.

B. Content and Form of Application Submission

The proposal must consist of two (2) separate and distinct parts, Part I—The Cost Proposal and Part II—The Technical Proposal. Applications that fail to adhere to the instructions in this section will be considered non-responsive and may not be given further consideration. Applicants who wish to apply do not need to submit a Letter of Intent. The completed application package is all that is required.

Part I—The Cost Proposal must include the following three items:

- The Standard Form (SF)–424, ''Application for Federal Assistance'' (available at *http://www.doleta.gov/sga/forms.cfm*). The SF–424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF–424 on behalf of the applicant will be considered the Authorized Representative of the applicant.
- All applicants for federal grant and funding opportunities are required to have a Data Universal Numbering System (DUNS) number provided by Dun and Bradstreet. See OMB Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). Applicants must supply their DUNS number on the SF–424. The DUNS number is a nine-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access this Web site, *www.dunanbradstreet.com,* or call 1–866–705–5711.
- The SF–424A Budget Information Form (available at *http://www.doleta.gov/sga/forms.cfm*). In preparing the Budget Information Form, the applicant must provide a concise narrative explanation to support the request. The budget narrative should explain the administrative costs and how they support the project goals. All applicants should indicate training costs-per-participant by dividing the total amount of the budget designated for training by the number of participants trained. Please note that applicants that fail to provide an SF–424, SF–424A and a budget narrative will be removed from consideration prior to the technical review process. If the proposal calls for integrating WIA or other federal funds or includes other leveraged resources, these funds should not be listed on the SF–424 or SF–424A, Budget Information Form, but should be described in the budget narrative. The amount of federal funding requested for the entire period of performance should be shown together on the SF–424 and SF–424A Budget Information Form. Applicants are also encouraged, but not required, to submit the OMB Survey No. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants, which can be found at: *http://www.doleta.gov/sga/forms.cfm.*

Part II—The Technical Proposal of the application demonstrates the applicant's capabilities to fulfill the intention of the SGA. The Technical Proposal is limited to twenty (20) double-spaced, single-sided, 8.5 inch x 11 inch pages with twelve point text font and one-inch margins. The first page of Part II—The Technical Proposal must consist entirely of an executive summary not to exceed one page. Applicants should number the Technical Proposal beginning with page number one. Any pages over the 20-page limit will not be reviewed. The required letter(s) of commitment and/or documentation of partnership must be submitted and will not count against the first 20 allowable pages. Please note, letters of commitment should be sent with or attached to the application. Additionally, the applicant must reference grant partners by organizational name in the text of the Technical Proposal. No cost data or reference to prices should be included in the Technical Proposal. Applications may be submitted electronically on *www.grants.gov or* in hard-copy via U.S. mail, professional overnight delivery service, or hand delivery. These processes are described in further detail in Part IV.C. Applicants submitting proposals in hard-copy must submit an original signed application (including the SF–424) and one (1) ''copy-ready'' version free of bindings, staples or protruding tabs to ease in the reproduction of the proposal by USDOL/ETA.

C. Submission Date, Times and Mailing Address

The closing date for receipt of applications under this announcement is November 17, 2008. Applications must be received at the address below no later than 4:30 p.m. (Eastern Time). Applications sent by e-mail, telegram, or facsimile will not be accepted. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

To apply by mail, please submit one (1) blue-ink signed, typewritten original of the application and two (2) signed photocopies in one package to the U.S. Department of Labor, Employment and

Training Administration, Division of Federal Assistance, Attention: Eileen Banks, Reference SGA/DFA PY 08–08, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Information about applying online through *http://www.grants.gov* can be found in Section IV.B of this document. Applicants are advised that mail delivery in the Washington area is delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address.

Applicants may apply online through grants.gov (*http://www.grants.gov*). It is strongly recommended that applicants applying online for the first time via grants.gov immediately initiate and complete the ''Get Registered'' registration steps at *http://www.grants.gov/applicants/get_registered.jsp.* These steps may take multiple days or weeks to complete, and this time should be factored into plans for electronic application submission in order to avoid unexpected delays that could result in the rejection of an application. It is highly recommended that online submissions be completed at least two (2) working days prior to the date specified for the receipt of applications to ensure that the applicant still has the option to submit by overnight delivery service in the event of any electronic submission problems. If submitting electronically through grants.gov, the components of the application must be saved as either .doc, .xls or .pdf files.

Late Applications. Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made, was properly addressed, and: (a) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application required to be received by the 20th of the month must be postmarked by the 15th of that month) or (b) was sent by professional overnight delivery service or submitted on grants.gov to the addressee not later than one working day prior to the date specified for receipt of applications. An application submitted though grants.gov will not be considered ''received'' by the Department of Labor unless it is: Electronically submitted on grants.gov prior to the deadline; ''validated'' by grants.gov; and forwarded by grants.gov to the Department of Labor. It is highly recommended that online submissions be completed two working days prior to the date specified for receipt of applications to ensure that the applicant still has the option to submit by professional overnight delivery service in the event of any electronic submission problems. Applicants take a significant risk by waiting until the last day to submit by grants.gov. ''Postmarked'' means a printed, stamped or otherwise placed impression that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the package. Failure to adhere to the above instructions will be a basis for a determination of non-responsiveness. Evidence of timely submission by a professional overnight delivery service must be demonstrated by equally reliable evidence created by the delivery service provider indicating the time and place of receipt.

D. Intergovernmental Review

This funding opportunity is not subject to Executive Order (EO) 12372, ''Intergovernmental Review of Federal Programs.''

E. Withdrawal of applications

Applications may be withdrawn by written notice at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

Part V. Applications Review Process

This section identifies and describes the criteria that will be used to evaluate proposals for the Young Parents Demonstration. The criteria and maximum point values are:

Criterion	Points
1. Description of Existing Program and Program Outcomes	15
2. Statement of Need and Targeted Population	10
3. Project Design and Service Strategy	40
4. Program Management and Organizational Capacity	20
5. Linkages to Key Partners	15
Bonus Points (Programs Serving Out-of-School Expectant Mothers and Out-of-School Young Parents)	10
Total Possible Points (including bonus)	110

1. Description of Existing Program and Program Outcomes (up to 15 Points)

The applicant should fully describe the existing program and document the past accomplishments of the program for expectant mothers and/or young parents. Please explain:

- How long the program has been in operation;
- What education, training and employment strategies are included;
- How case management services (including follow-up and retention) are provided;
- The type of mentoring available; and
- The support services provided in the existing program.

The applicant should also provide annual performance data on the following factors, as applicable:

- Number of youth recruited;
- Number of youth enrolled;
- Number of youth that have completed the program;
- Number and percent of youth receiving their GED or high school diploma (Please differentiate between the two.);
- Rate of literacy and numeracy gains by participants;
- Number and percent of youth who have entered employment;
- Employment retention rates;
- Number and percent of youth who have entered post-secondary training or education;
- Post-secondary training or education retention rates; where available, please indicate the number of participants who have completed post-secondary training or education and have achieved a credential;
- Number and percent of youth who have entered registered apprenticeship programs; and
- Annual cost per participant.

Scoring under this criterion will be based on the extent to which applicants describe their existing program and their performance accomplishments including:

- The inclusion of the necessary program components listed in Part I, Section 4;
- The types of education, training and employment activities undertaken;
- The degree to which youth are exposed to and trained in a variety of high-growth and high-demand fields; and
- The degree to which the performance data is provided and documented.

2. Statement of Need and Targeted Population (up to 10 Points)

The applicant must clearly describe the need for the additional services

provided under this grant opportunity. Applicants will describe in detail the community in which the grant will operate, the need in that community for the grant resources, and the pool of individuals who will be receiving the grant services. Scoring under this criterion will be based on the extent to which applicants describe the following:

- The community where the Young Parents Demonstration Grant will operate. If there are particular neighborhoods within the community where the grant will be focused, describe these neighborhoods and provide available data and data sources specific to those areas. Required information includes the population of the area, its poverty rate, its unemployment rate, the drop-out rate, and the number of 16–24 year olds without a high school diploma; [3]
- The needs of the community that is proposed to be served through the grant and the benefits to the community of the additional service intervention; and
- The characteristics of the targeted expectant mothers and/or young parents, ages and number to be served by the grant. Please identify, if any, the high-risk category to which the targeted participants belong including: Victims of child abuse, children of incarcerated parents, court-involved youth, youth at-risk of court involvement, homeless and runaway youth, Indian and Native American youth, migrant youth, youth in or aging out of foster care, and youth with disabilities.

All of these indicators should be presented in chart form and the applicant must provide the sources for the data provided.

3. Project Design and Service Strategy (up to 40 Points)

a. Bump-Up Experiment Strategy (15 Points)

Applicants are requested to specify the purpose of the proposed project and demonstrate how the proposed program intervention (bump-up service) will provide solutions to the workforce challenges of young parents. Scoring under this criterion will be based on the extent to which applicants describe:

- The new intervention proposed and how it will upgrade the education, basic and occupational skills of the participants. Please note that the intervention must be a *new*, persistent service intervention above and beyond the grantee's existing or committed menu of services (i.e., a ''bump-up'' initiative). The grant can be used to expand initiatives under the education, employment, and/or training component or the mentoring component (but NOT the case management or supportive services components). Please see Part I, Section 4 for more information on this requirement.
- How the additional ''bump-up'' services will be used to enhance participants' educational attainment, training services and employment prospects and how such methodologies will be provided (i.e., at the program facilities, high school, community college, community center, One-Stop Career Center, etc.).
- How the services will shorten the period of time required for expectant mothers and/or young parents to acquire basic and occupational skills, and credentials demanded by local high-growth industry employers; and incorporate follow-up retention services intended to sustain and advance the gains made in education and employment and increase the participants' opportunities for economic self-sufficiency.

b. Participant Recruitment (5 Points)

Applicants must provide a description of how eligible youth will be selected as participants, including a description of arrangements that will be made with Local Workforce Investment Boards, One-Stop Career Centers, faith-based and community-based organizations, state educational agencies or local educational agencies, public assistance agencies, the courts of jurisdiction, and other appropriate public and private agencies. As appropriate, please fully describe the special outreach efforts that will be undertaken to recruit expectant mothers and/or young parents from the high-risk categories mentioned previously. Applicants will be evaluated on the quality and comprehensiveness of their recruitment strategy including methods for outreach, referral, and selection.

c. Education and Occupational Skills Training Service Delivery (10 Points)

Applicants must describe the educational and job training activities, work opportunities, post-secondary education and training opportunities, and other services that will be provided to participants (whether they are part of the existing service strategy or bump-up component), and how those activities, opportunities, and services will prepare participants for employment in occupations in demand in the local labor market. Scoring under this criterion will be based on the extent to which applicants describe:

- The service process that will be used in the project including any sequence of services in the overall process (i.e., assessment, case management, referrals, training, etc.), how specific services for participants will be determined, and which partner(s) will provide the services. Also, the applicant must identify when the services will become available to the participants (i.e., before, during or after training, or pre- or post-employment/placement), and describe how these services will facilitate young parents' participation in the program;
- How these activities are integrated with the academic, skills training, and career exploration and employment components of the program; and
- A comprehensive service delivery program that includes education, training and/or employment, case management services, ongoing services such as mentoring and life skills, and other related services that may mitigate barriers to stable program participation such as: child care assistance, transportation assistance, mental or physical health care, and parenting education classes, among others.

i. Education Program

The applicant must indicate the type of academic credential that participants earn while in the program (such as a GED or high school diploma). Under this sub-criterion, applicants will be rated on evidence of the following:

- The quality of the academic program and the qualifications of the teaching staff;
- The presence of innovative and successful strategies that the program or initiative has used to address low basic skills of participants. If distance learning and/or credit retrieval is used, please fully describe how this is incorporated into the overall academic program;
- The relationship between the program and the local school district(s) (if applicable);
- How the academic program is integrated with the occupational skills training component of the program;
- The interaction of the academic and occupational skills training;
- The program's linkages to local high schools, community colleges and trade schools;
- The types of college exploration, planning, preparation, and assistance that will be provided; and
- The types of follow-up services that will be provided to support youth as they transition to post-secondary

[3] To obtain these indicators, applicants can use Census Tract Data from the 2000 Census—go to *http://factfinder.census.gov* and use the link on the left for People.

education and ensure that they graduate.

ii. Occupational Skills Training

The applicant must discuss the occupational skills training component of the program. Under this sub-criterion, applicants will be rated on evidence of the following:

- Where and how the training will be conducted,
- How the curriculum is developed,
- The existence of a career ladder,
- The type of industry recognized credentials that result from the training, and
- The involvement of industry partners in the development of the training.

The applicant should provide labor market information for the community, state, and/or region where the grant will be implemented, including both current data (as of the date of submission of the application) and projections of career opportunities in growing industries. The applicant should explain how the grant will prepare youth for the local labor market in demand driven occupations and other high-growth career fields.

d. Mentoring and Other Supportive Services (5 Points)

Applicants must describe mentoring services and other supportive services that will be available for expectant mothers and/or young parents through the proposed program, and the qualifications of instructors, mentors and other required professionals in charge to facilitate the young parents' participation. The applicant must indicate how the mentoring and other supportive services fit into the overall service plan for the project participants. Proposed mentoring projects should seek to address each of three types of mentoring strategies: Personal Development Mentoring which educates and supports youth during times of personal or social stress and provides guidance for decision making; Educational or Academic Mentoring which helps a student improve their overall academic achievement; and Career Mentoring which helps the youth develop the necessary skills to enter or continue on a career path. The proposed mentoring strategies should include a period of mentoring and follow-up that is no less than 18 months in duration. The Department does not expect that every project participant will have a mentor, but that a sufficient proportion of the project participants have a mentor.

e. Post-Program Transition (5 Points)

The applicant must describe the types of post-program transition services that will be offered to prepare youth for a career pathway and/or educational opportunities and placements. Scoring under this criterion will be based on the extent to which applicants describe the following:

- The program's assessment of each participant's work readiness and how work readiness training will be provided, how an individual's readiness for placement in secondary or post-secondary education and/or apprenticeship programs will be assessed, and the types of career exploration and planning activities that will be offered by the program, particularly for high-growth, high-demand, and high-wage occupations; [4]
- The program's job placement and retention strategy, including how the program will work with employers and/or One-Stop Career Centers to identify and create job openings for the young parents served by the program; and
- The types of follow-up that will be provided to young parents after completing the program. These services should relate to employment placement and retention, post-secondary transition and degree attainment. Describe how appropriate continued support services will be provided.

4. Program Management and Organizational Capacity (up to 20 Points)

The applicant must describe their organization and state its qualifications for running a Young Parents Demonstration Grant including years of operation, current annual budget, experience of staff working with the targeted population and continuity of leadership and their relevant experience. Scoring under this criterion will be based on the extent to which applicants describe the following:

- The previous experience of the organization in operating grants from either federal or non-federal sources;
- The organization's capacity to accomplish the goals and outcomes of the project, including the ability to collect and manage data in a way that allows consistent, accurate, and expedient reporting for the project evaluation;
- The fiscal controls in place in the organization for auditing and accountability procedures;
- The organization's ability to handle multiple funding streams. As some grantees may be simultaneously managing grants from other federal or state agencies, or private organizations, it is especially important that organizations be able to demonstrate that they have accounting systems in place that are able to manage multiple funding streams in an organized and delineated manner;
- The proposed project management structure including, where appropriate, the identification of a proposed project manager, discussion of the proposed staffing pattern, and the qualifications and experience of key staff members;
- The time commitment of all proposed staff; and
- The roles and contribution of staff, consultants, and collaborative organizations.

5. Linkages to Key Partners (up to 15 Points)

The applicant must demonstrate that the proposed project will be implemented by a strategic partnership. Collaboration across youth serving agencies/organizations is critical to the success of any youth initiative or program. A single organization does not typically have the resources to respond to the myriad of issues that impact youth most in need. Partnering across youth serving organizations that address specific youth barriers is critical to the success of any youth serving entity. Because of the importance of collaboration and partnership, DOL is a member of the Shared Youth Vision Federal Partnership. The Federal Partnership has a mission to collaborate and coordinate across agencies in order to effectively serve the youth most in need. There are a number of states (currently over half) who have formed Shared Youth Vision State teams. Please go to the ETA's Web site for a list of state teams and more information on the Shared Youth Vision at *http://www.doleta.gov/ryf/WhiteHouseReport/VMO.cfm*.

Points for this factor will be awarded based on: (a) The comprehensiveness of the partnership and the degree to which each key partner plays a committed role, either financial or non-financial, in the proposed project; (b) the breadth and depth of each key partner's contribution, their knowledge and experience concerning the proposed grant activities, and their ability to impact the success of the project; (c) evidence, including letters of commitment, that key partners have expressed a clear dedication to the project and understand their areas of responsibility; and (d) the inclusion of

[4] For a list of the U.S. Department of Labor's Employment and Training Administration's Targeted High-Growth Industries, go to: *http://www.doleta.gov/BRG/eta_default.cfm*.

existing statewide and local collaborations focused on implementing a coordinated and jointly funded overall youth strategy.

Applicants should provide evidence of a plan for interaction and communication between partners and the demonstrated ability of the lead agency to successfully manage partnerships. Scoring under this criterion will be based on the extent to which applicants describe:

- The qualifications of the key partners who will be involved in the proposed project. Specifically, the applicant should describe in detail the activities to be undertaken by partners, the level of commitment from each partnering organization, and their qualifications to assist with this project. As an attachment, the applicant should include a letter of commitment from each key partner;
- How the existing program coordinates or will coordinate its services with those provided by other entities including public schools, community colleges, national service programs, other youth service providers, the juvenile justice system, foster care, housing, faith-based and community-based organizations such as those providing mentoring, and other community entities;
- The specific role of employer partners in the proposed program, such as their role in developing the new ''bump-up'' intervention, providing on-the-job training, job shadowing, internships, or placement activities.

Bonus Points (10 Points)

Given that out-of-school expectant mothers and out-of-school young parents are more difficult to serve and may not have the opportunity to receive the extensive array of services that is available for in-school young parents, ten bonus points will be granted to applicants who serve out-of-school expectant mothers and/or young parents.

Review and Selection Process. Applications will be accepted after the publication of this announcement until the closing date. A technical review panel will make a careful evaluation of applications against the criteria set forth in Part V of this Solicitation. These criteria are based on the policy goals, priorities, and emphases set forth in this SGA. The ranked scores will serve as the primary basis for selection of applications for funding, in conjunction with other factors such as: Urban-rural, and geographic balance; the availability of funds; and which proposals are most advantageous to the Government. The panel results are advisory in nature and not binding on the Grant Officer, who may consider any information that comes to his attention. The Government will consider applications rated by the evaluation panels with a score of 80 or above to be eligible for a grant award. Applicants that score less than 80 will not be eligible for a grant award. It is possible that ETA may not award grants under this Solicitation, depending on the quality and quantity of proposals submitted. ETA may elect to award the grant(s) with or without prior discussions with the applicants. Should a grant be awarded without discussions, the award will be based on the applicant's signature on the SF 424, which constitutes a binding offer.

Part VI. Award Administration Information

A. Award Notices

All award notifications will be posted on the ETA Web site at *www.doleta.gov*. Applicants selected for award will be contacted directly before the grant's execution. Applicants not selected for award will be notified by mail as soon as possible.

Note: Selection of an organization as a grantee does not constitute approval of the grant application as submitted. Before the actual grant is awarded, ETA may enter into negotiations about such items as programs components, staffing, and administrative systems in place to support grant implementation. If negotiations do not result in a mutually acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

B. Administrative and National Policy Requirements

1. Administrative Program Requirements

All grantees will be subject to all applicable Federal laws, regulations, and the applicable OMB Circulars. The grant(s) awarded under this SGA will be subject to the following administrative standards and provisions, if applicable:

a. Workforce Investment Act—20 CFR part 667. (General Fiscal and Administrative Rules).

b. Non-Profit Organizations—OMB Circulars A–122 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).

c. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).

d. State and Local Governments—OMB Circulars A–87 (Cost Principles) and 29 CFR part 97 (Administrative Requirements).

e. Profit Making Commercial Firms—FAR—48 CFR part 31 (Cost Principles), and 29 CFR part 95 (Administrative Requirements).

f. All entities must comply with 29 CFR parts 93 and 98, and, where applicable, 29 CFR parts 96 and 99.

g. The following administrative standards and provisions may also be applicable:

i. 29 CFR part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries;

ii. 29 CFR part 30—Equal Employment Opportunity in Apprenticeship and Training;

iii. 29 CFR part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964;

iv. 29 CFR part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance;

v. 29 CFR part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor;

vi. 29 CFR part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor;

vii. 29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance;

viii. 29 CFR part 37—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998. In accordance with Section 18 of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65) (2 U.S.C. 1611) non-profit entities incorporated under Internal Revenue Service Code section 501(c)(4) that engage in lobbying activities are not eligible to receive Federal funds and grants.

Note: Except as specifically provided in this Notice, ETA's acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, ETA's award does not provide the justification or basis to sole source the procurement, i.e., avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

C. Special Program Requirements

ETA will require that the program or project participate in a formal evaluation of overall grant performance. To measure the impact of the grant program, ETA will conduct an independent evaluation of the outcomes and benefits of the projects. Grantees must agree to make records on participants, employers and funding available, and to provide access to program operating personnel and participants, as specified by the evaluator(s) under the direction of ETA, including after the expiration date of the grant. Please note that each grantee must agree to participate in a ''bump-up'' random assignment experiment. Please see Part I, Section 3 for more information on this requirement. ETA will provide both a technical assistance and evaluation contractor to assist grantees in developing and implementing the individual random assignment demonstrations to ensure project fidelity across the sites.

D. Reporting

As a condition of participation in the grant program, applicants will be required to submit periodic reports such as the Quarterly Financial Reports, Progress Reports and Final Reports as follows:

Quarterly Financial Reports. A Quarterly Financial Status Report (ETA 9130)/OMB Approval No. 1205–0461 is required until such time as all funds have been expended and/or the grant period has expired. Quarterly financial reports are due 45 days after the end of each calendar year quarter. Grantees must use ETA's Online Electronic Reporting System.

Quarterly Progress Reports. The grantee must submit a quarterly Performance Progress Report, SF–PPR/ OMB Approval Number: 0970–0443 to the designated Federal Project Officer within 45 days after the end of each calendar year quarter. Two copies are to be submitted providing a detailed account of activities undertaken during that quarter. ETA may require additional data elements to be collected and reported on either a regular basis or special request basis. Please see Part V Section 1 of this SGA for the types of data elements ETA will require for quarterly submission. Grantees must agree to meet ETA's reporting requirements.

The quarterly progress report must be in narrative form and must include: In-depth information on accomplishments including project success stories, upcoming grant activities, promising approaches and processes, and progress toward performance outcomes, among others. Also, reports should include updates on product, curricula, training development, challenges, barriers, or concerns regarding project progress. Reports should also include lessons learned in the areas of project administration and management, project implementation, partnership relationships, and other related information. ETA will provide grantees with guidance and tools to help develop the quarterly reports once the grants are awarded.

Final Report. A draft final report must be submitted no later than 60 days prior to the expiration date of the grant. This report must summarize project activities, employment outcomes, and related results of the training project, and should thoroughly document capacity building and training approaches. The final report should also include copies of all deliverables, e.g. curricula and competency models. After responding to ETA questions and comments on the draft report, three copies of the final report must be submitted no later than the grant expiration date. Grantees must agree to use a designated format specified by ETA for preparing the final report.

Part VII. Agency Contact Information

For further information regarding this SGA, please contact Eileen Banks, Grants Management Specialist, (202) 693–3403. (Please note this is not a toll-free number.) Applicants should fax all technical questions to (202) 693–2879 and must specifically address the fax to the attention of Eileen Banks and should include SGA/DFA PY–08–08, a contact name, fax and phone number, and e-mail address. B. Jai Johnson is the Acting Grant Officer for this announcement and Jim Stockton is the Senior Grant Officer for this announcement. This announcement is being made available on the ETA Web site at *http://www.doleta.gov/sga/sga.cfm*, at *http://www.grants.gov*, as well as in the **Federal Register**.

Part VIII. Additional Resources of Interest to Applicants

Resources for the Applicant

ETA maintains a number of Web-based resources that may be of assistance to applicants.

- America's Service Locator at *http://www.servicelocator.org* provides a directory of the nation's One-Stop Career Centers.
- Applicants are encouraged to review ''Help with Solicitation for Grant Applications'' at *http://www.dol.gov/cfbci/sgabrochure.htm*.
- For a basic understanding of the grants process and basic responsibilities of receiving Federal grant support, please see ''Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government'' available at *http://www.whitehouse.gov/government/fbco/guidance/index.html*.

Other Information

OMB Information Collection No. 1225–0086

Expires: September 30, 2009

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503. Please do not return the completed application to the OMB. Send it to the sponsoring agency as specified in this solicitation. This information is being collected for the purpose of awarding a grant. The information collected through this ''Solicitation for Grant Applications'' will be used by the Department of Labor to ensure that grants are awarded to the applicants best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential.

Signed at Washington, DC, this 24th day of September 2008.

James Stockton,

Grant Officer, Employment and Training Administration.

[FR Doc. E8–23319 Filed 10–2–08; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *September 15 through September 19, 2008.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–63,765; Campbell Manufacturing, Sparta, MO: July 25, 2007.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,841; Great Lakes Industry, Inc., Jackson, MI: August 8, 2007.

TA–W–63,885; Cochrane Furniture Company, Lincolnton, NC: August 15, 2007.

TA–W–63,777; Wilton Armetale, Aerotek Commercial Staffing, Mount Joy, PA: July 9, 2007.

TA–W–63,390; Hickory Business Furniture, Inc., Subsidiary of HNI Corporation, Hickory, NC: May 14, 2007.

TA–W–63,814; T.I. Industries, Inc., Lexington, NC: August 4, 2007.

TA–W–63,834; Hickory Hill Furniture Corp., Subsidiary of Norwalk Furniture, Kelly Services, Fulton, MS: July 25, 2007.

TA–W–63,875; JD Lumber, Inc., Priest River, ID: August 12, 2007.

TA–W–63,881; JCIM, LLC, Workers Paid by Plastech Engineered, Caro, MI: August 8, 2007.

TA–W–63,883; Metaldyne, Sintered Division, Ridgway, PA: August 11, 2007.

TA–W–63,953; Katahdin Paper Company, LLC, Millinocket, ME: August 27, 2007.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,775; Duncan Solutions, Harrison, AR: July 30, 2007.

TA–W–63,846; Kennametal, Inc., Chestnut Ridge Plant, Latrobe, PA: August 7, 2007.

TA–W–63,860; K–Rain Manufacturing Corp., Riviera Beach, FL: August 7, 2007.

TA–W–63,888; Plastech Engineered Products (JCIM), Franklin, TN: August 7, 2007.

TA–W–63,939; Hewlett Packard, Inkjet & Web Sol., CDI, Manpower, Securitas, Volt, Corvallis, OR: August 26, 2007.

TA–W–63,972; DeRoyal Industries, Inc., DeRoyal Surgical Div., Powell, TN: August 26, 2007.

TA–W–63,978; Rieter Automotive Systems, Leased Workers From The Wood Companies, Saint Joseph, MI: July 22, 2007.

TA–W–63,996A; MPC Computers, LLC, North Sioux City, SD: September 4, 2007.

TA–W–63,996; MPC Computers, LLC, Leased Workers of Adecco Staffing, Nampa, ID: September 4, 2007.

TA–W–64,039; Kaz, Inc., Hudson, NY: September 12, 2007.

TA–W–63,829; S4 Carlisle Publishing Services, Carlisle Publising, Carlisle Communications, Dubuque, IA: July 29, 2008.

TA–W–63,838; International Rectifier, Fabrication Facility #5, El Segundo, CA: July 29, 2007.

TA–W–63,849; HDM/Henredon Showroom/Offices, A Subsidiary of Furniture Bands International, High Point, NC: August 5, 2007.

TA–W–63,863; WH Manufacturing, Inc., A Subsidiary of Propulsys, Inc., Formerly known as White Hydraulics, Inc., Hopkinsville, KY: August 12, 2007.

TA–W–63,870; Peerless-Winsmith, Inc., Springville, NY: August 8, 2007.

TA–W–63,877; Covidien, Medical Devices Division, formerly known as Tyco Healthcare Group, LP, Watertown, NY: August 11, 2007.

TA–W–63,945; Futuro, A Division of Beiersdorf NA, Mariemont, OH: November 1, 2007.

TA–W–63,983; Hillerich and Bradsby Co., Louisville Slugger Div, Select Staffing, Ontario, CA: July 22, 2008.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,987; Metaldyne, St Marys, PA: October 31, 2008.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

TA–W–63,765; Campbell Manufacturing, Sparta, MO.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–63,959; KDH Defense Systems, Inc., Johnstown, Pa.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–63,641; Shaw Industries,Residential Manufacturing, Stevenson, AL.

TA–W–63,781; Dow Reichhold Specialty Latex, LLC, Chickamauga, GA.

TA–W–63,836; Weyerhaeuser Company,ILevel Coburg Sawmill, Eugene, OR.

TA–W–63,928; Norandal USA, Inc., Salisbury, NC.

TA–W–63,933; Upoc Networks, Inc., A Subsidiary of DADA USA, Inc., New York, NY.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–63,854; Cassens Transport, Inc., Fenton, MO.

TA–W–63,958; American Parts and Services, Inc., Schaumburg, IL.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of *September 15 through September 19, 2008*. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 26, 2008.

Erin Fitzgerald,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E8–23297 Filed 10–2–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade

Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 14, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 14, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 24th day of September 2008.

Erin Fitzgerald,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 9/15/08 and 9/19/08]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
64041	A.G. Simpson (State)	Shreveport, LA	09/15/08	09/12/08
64042	Grupo Antolin (State)	Shreveport, LA	09/15/08	09/12/08
64043	Intier (Innertech-Shreveport) (State)	Shreveport, LA	09/15/08	09/12/08
64044	Kace/Dana (Kace Logistics) (State)	Shreveport, LA	09/15/08	09/12/08
64045	Kace/Siegel Roberts (State)	Shreveport, LA	09/15/08	09/12/08
64046	Guilford Mills (Wkrs)	Kenansville, NC	09/15/08	09/04/08
64047	Shreveport Logistics (State)	Shreveport, LA	09/15/08	09/12/08
64048	Rieter Automotive Systems (State)	Shreveport, LA	09/15/08	09/12/08
64049	Meridian Automotive Systems (State)	Shreveport, LA	09/15/08	09/12/08
64050	Ventra St. Louis LLC (Comp)	Pacific, MO	09/15/08	09/12/08
64051	Pacific Consolidated Industries (Comp)	Riverside, CA	09/15/08	09/03/08
64052	Arkansas Extrusions (State)	Hot Springs, AR	09/15/08	09/12/08
64053	Oakley (State)	Shreveport, LA	09/15/08	09/12/08
64054	Modas LLC (State)	Shreveport, LA	09/15/08	09/12/08
64055	Tango Transport, Inc. (State)	Shreveport, LA	09/16/08	08/01/08
64056	Remy International, Inc. Co. (Comp)	Winchester, VA	09/16/08	09/11/08
64057	Alba Health LLC (State)	Rockwood, TN	09/16/08	09/02/08
64058	Meridian Automotive Systems (Wkrs)	Ionia, MI	09/16/08	09/08/08
64059	Johnson Controls (State)	Shreveport, LA	09/16/08	08/01/08
64060	Ai-Shreveport LLC (State)	Shreveport, LA	09/16/08	08/29/08
64061	R R Donnelley (Wkrs)	Monroe, WI	09/16/08	09/05/08
64062	Valspar Corporation (Wkrs)	Jackson, TN	09/16/08	08/29/08
64063	XP Power (State)	Anaheim, CA	09/16/08	09/15/08
64064	Bumper Works, Inc. (UAW)	Danville, IL	09/17/08	09/15/08
64065	Aeiomed, Inc. (State)	Minneapolis, MN	09/17/08	09/16/08
64066	Mid South Electrical (Wkrs)	East Gadsden, AL	09/17/08	08/28/08
64067	Hillerich and Bradsby Company (CA)	Ontario, CA	09/17/08	09/16/08
64068	Memorex Products, Inc. (State)	Cerritos, CA	09/17/08	09/16/08
64069	Norwalk International Wood Products LLC (Comp)	Byrdstown, TN	09/17/08	09/15/08
64070	Perfection Mold and Machine Company (Comp)	Akron, OH	09/17/08	09/16/08
64071	J P Morgan Chase Bank NA (Wkrs)	Lexington, KY	09/17/08	08/30/08
64072	Bowling Green Metalforming (Comp)	Bowling Green, KY	09/18/08	09/12/08
64073	Broan Nutone Storage Solutions (Comp)	Cleburne, TX	09/18/08	09/01/08
64074	First Insight Corporation (Comp)	Hillsboro, OR	09/18/08	09/17/08
64075	Lexis Nexis/Global Data Fabrication (Wkrs)	Miamisburg, OH	09/18/08	09/09/08
64076	Pearson Education (Wkrs)	York, PA	09/18/08	09/09/08
64077	Trelleborg YSH, Inc. (Comp)	Peru, IN	09/18/08	09/17/08
64078	Tyco Elecontronics, Global Application Tooling (Comp)	Harrisburg, PA	09/19/08	09/18/08
64079	SKF Automotive Division (Comp)	Glasgow, KY	09/19/08	09/18/08
64080	Prevue Employment Service/Wetzel Molded Plastics (Wkrs).	Warren, OH	09/19/08	09/12/08
64081	Emerson Appliance (Wkrs)	Frankfort, IN	09/19/08	09/15/08
64082	Precision Manufacturing and Assembly (State)	Dayton, OH	09/19/08	09/18/08
64083	American Axle and Manufacturing (Wkrs)	Detroit, MI	09/19/08	09/16/08
64084	Adobe Air, Inc. (Wkrs)	Phoenix, AZ	09/19/08	09/12/08
64085	Whirlpool Corporation (State)	Fort Smith, AR	09/19/08	09/18/08

[FR Doc. E8–23296 Filed 10–2–08; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,640]

3M Touch Systems, a Subsidiary of 3M Electro & Communication Division, Milwaukee, WI; Notice of Negative Determination on Reconsideration

On August 1, 2008, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on August 12, 2008 (73 FR 46920).

The initial investigation resulted in a negative determination based on the finding that imports of touch screens for mobile phones did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration the company official provided an additional list of customers who purchased touch screens from the subject firm.

On reconsideration the Department of Labor surveyed these customers regarding their purchases of touch screens (including like or directly competitive products) during 2006, 2007, and January through June 2008 over the corresponding 2007 period. The survey revealed no imports of touch screens during the relevant period.

The petitioner also stated that workers of the subject firm were previously certified eligible for TAA. The petitioner further states that if the subject firm ''did not attempt to re-position the business and instead, close entirely in 2007, all the employees would have been eligible for TAA.'' The petitioner seems to allege that because workers of the subject firm were previously certified eligible for TAA, the workers of the subject firm should be granted another TAA certification.

When assessing eligibility for TAA, the Department exclusively considers import impact during the relevant time period (from one year prior to the date of the petition). Therefore, events occurring before 2007 are outside of the relevant period and are not relevant in this investigation.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of 3M Touch Systems, a subsidiary of 3M, Electro & Communications Division, Milwaukee, Wisconsin.

Signed at Washington, DC, this 23rd day of September, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–23302 Filed 10–2–08; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,502]

Onsite International Inc., El Paso, TX; Notice of Negative Determination Regarding Application for Reconsideration

By application of July 28, 2008, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on July 7, 2008, and published in the **Federal Register** on July 28, 2008 (73 FR 43790).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Onsite International, Inc., El Paso, Texas engaged in administrative functions was denied because the petitioning workers did not produce an article within the meaning of Section 222 of the Act.

The workers of Onsite International Inc., El Paso, Texas were previously certified eligible to apply for TAA under petition number TA–W–55,702, which expired on October 13, 2006. The investigation revealed that production at the subject firm ceased in 2006.

The petitioner contends that the Department erred in its interpretation of work performed at the subject facility and further conveys that workers of the subject company ''handled all aspects of shipping, receiving, repairing, repacking of the garments''. The petitioner further states that the subject firm produced articles in the last three years and workers of the subject firm were previously certified eligible for TAA based on a shift in production to Mexico. The petitioner seems to allege that because the petitioning workers were part of the initial certified worker group and remained employed by the subject firm after all the production stopped and beyond October 13, 2006, the current worker group, who are engaged in distribution of articles, should be also eligible for TAA.

A company official of the subject firm verified that production of articles was shifted from the subject firm to Mexico in 2004 and that no production took place at the subject firm since 2006. The official further clarified that workers of the subject firm remained to end programs and dispose of the assets after all production ceased.

The investigation revealed that the subject facility did not manufacture articles since January 2006, when production shifted to Mexico. Although a small amount of cutting continued until early 2007, workers of the subject firm were not engaged in production of an article or supporting production of the article during the relevant time period.

Under the Trade Act of 1974, as amended, certification of group eligibility to apply for TAA will be issued where a shift of production is the alleged basis for certification provided that (1) a significant number or proportion of the workers of such workers' firm, or an appropriate subdivision, have been totally or partially separated or are threatened to become totally or partially separated; and (2) there has been a shift in production from the workers' firm or subdivision to an eligible foreign country of articles like or directly competitive with those produced by the subject firm or subdivision under section 222(a)(2)(B)(i); and, either the foreign country is a party to a free trade agreement with the United States under section 222(a)(2)(B)(ii)(I), is a beneficiary country under section 222(a)(2)(B)(ii)(II), or there has been or is likely to be an increase in imports of like or directly competitive articles. The Department interprets the standard for certification as requiring that the shift of production of an article to a foreign country must be a cause of the separations of workers of the firm that were engaged in or supported the production of that article.

That the subject workers were not separated, or threatened with separation, until January 31, 2008 (two

years after the subject firm's shift of production of garments to Mexico) supports the Department's findings that the subject workers' employment with the subject firm was not dependent upon domestic production and that the subject firm's shift of garment production to Mexico was not a factor in the subject workers' separations. Therefore, the Department determines that the group eligibility to apply for benefits under the Trade Act of 1974, as amended, has not been met.

Further, the Department found that no new information was provided to contradict the original negative findings.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 19th day of September 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–23301 Filed 10–2–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,071]

Chase Home Finance, LLC, Division of JP Morgan & Co., Lexington, KY; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 17, 2008 in response to a worker petition filed on behalf of workers of Chase Home Finance, LLC, a division of JP Morgan Chase & Co., Lexington, Kentucky.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 25th day of September 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–23293 Filed 10–2–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,067]

Hillerich and Bradsby Company, Ontario, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 17, 2008 in response to a petition filed by the International Brotherhood of Teamsters, Local 986, on behalf of workers of Hillerich and Bradsby Company, Ontario, California.

All workers of Hillerich and Bradsby Company, Louisville Slugger Division, Ontario, California, including on-site leased workers from Select Staffing, are covered by an existing certification, TA–W–63,983. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of September 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–23295 Filed 10–2–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,960]

Peoploungers, Inc., Mantachie, MS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 29, 2008 in response to a worker petition filed by a company official on behalf of workers at Peoploungers, Inc., Mantachie, Mississippi.

The petitioning group of workers is covered by an active certification (TA–W–62,583A, amended), which expires on September 23, 2010. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 24th day of September 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–23294 Filed 10–2–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,038]

Phoenix Leather, Inc., Brockton, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 12, 2008, in response to a worker petition filed by former workers of Phoenix Leather, Inc., Brockton, Massachusetts.

The petition was only filed by two workers, which does not meet the requirement of three workers necessary to file a petition. As a result, the petition regarding the investigation has been deemed invalid. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of September 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–23303 Filed 10–2–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0037]

State Plans for the Development and Enforcement of State Standards; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its request for an extension of the information collection requirements associated with its regulations and program regarding State Plans for the development and enforcement of state standards (29 CFR 1902, 1952, 1953, 1954, 1955, 1956).

DATES: Comments must be submitted (postmarked, sent, or received) by December 2, 2008.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2008–0037, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2008–0037). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Barbara Bryant at the address below to obtain a copy of the Information Collection Request.

FOR FURTHER INFORMATION CONTACT: Barbara Bryant, Directorate of Cooperative and State Programs, Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3700, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2244; e-mail, *bryant.barbara@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, has practical utility, reporting burden (time and cost) is minimized, collection instruments are understandable, and OSHA's estimate of the information collection burden is correct. Currently, OSHA is soliciting comments concerning the extension of the information collection requirements contained in the series of regulations establishing requirements for the submission, initial approval, continuing approval, final approval, monitoring and evaluation of OSHA-approved State Plans:

- 29 CFR Part 1902, State Plans for the Development and Enforcement of State Standards;
- 29 CFR Part 1952, Approved State Plans for Enforcement of State Standards;
- 29 CFR Part 1953, Changes to State Plans for the Development and Enforcement of State Standards;
- 29 CFR Part 1954, Procedures for the Evaluation and Monitoring of Approved State Plans;
- 29 CFR Part 1955, Procedures for Withdrawal of Approval of State Plans; and
- 29 CFR Part 1956, State Plans for the Development and Enforcement of State Standards Applicable to State and Local Government Employees in States without Approved Private Employee Plans.

Section 18 of the Occupational Safety and Health Act offers an opportunity to the States to assume responsibility for the development and enforcement of State standards through the mechanism of an OSHA-approved State Plan. Absent an approved plan, States are precluded from enforcing occupational safety and health standards in the private sector with respect to an issue that is addressed by OSHA. Once approved and operational, the State provides most occupational safety and health enforcement and compliance assistance in the State in lieu of Federal OSHA. States also must extend this jurisdiction to cover State and local government employees. In order to obtain and maintain State Plan approval, a State must submit various documents to OSHA describing its program structure and operation, including any modifications thereto as they occur, in accordance with the identified regulations. OSHA funds 50% of the costs required to be incurred by an approved State Plan with the State at least matching and providing additional funding at its discretion.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on participating States; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is proposing to extend the collection of information requirements associated with its State Plan regulations. In doing so, the Agency is proposing to increase the burden hours from 10,522 to 10,652 hours. The increase is a result of increasing the frequency and time for State Plans to respond to requests for summary information. The Agency will summarize the comments submitted in response to this notice and will include this summary in its request to OMB to extend the approval of the information collection requirements related to its six State Plan regulations.

Type of Review: Extension of a currently approved collection.

Title: State Plans for the Development and Enforcement of State Standards.

OMB Number: 1218–0247.

Affected Public: Designated State government agencies that are seeking or have submitted and obtained approval for State Plans for the development and enforcement of occupational safety and health standards.

Number of Respondents: 27.

Frequency of Response: On occasion; quarterly; annually.

Average Time Per Response: Varies from .5 hour to respond to an information survey to 80 hours to document State annual performance goals.

Estimated Total Burden Hours: 10,652.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

(1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2008–0025). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, this 29th day of September, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–23329 Filed 10–2–08; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

Extension of Public Comment Period on the Draft Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of public comment period.

SUMMARY: This notice revises a notice published on September 19, 2008, in the **Federal Register** (73 FR 54435), which announced, in part, that the public comment period for the NRC's draft Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities (Draft GEIS) closes on October 7, 2008. The purpose of this notice is to extend the public comment period on the draft GEIS to November 7, 2008.

DATES: The NRC recently has held public meetings on the Draft GEIS in Nebraska, New Mexico, South Dakota, and Wyoming, as part of the public comment process for the Draft GEIS. Additionally, members of the public have been submitting written comments on the Draft GEIS since the initial notice of availability was published on July 28, 2008 (73 FR 43795). In response to multiple requests received at the public meetings and in writing, the comment period on the Draft GEIS is being extended to November 7, 2008. The NRC will consider comments received or postmarked after that date to the extent practical. Written comments should be submitted as described in the **ADDRESSES** section of this notice.

ADDRESSES: Members of the public are invited and encouraged to submit comments on the Draft GEIS to the Chief, Rulemaking, Directives, and Editing Branch, Mailstop: T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The NRC encourages comments submitted electronically to be sent to *NRCREP.Resource@nrc.gov.* Please include ''Uranium Recovery GEIS'' in the subject line when submitting written comments.

FOR FURTHER INFORMATION CONTACT: For general information on the NRC's NEPA process, or the environmental review process related to the Draft GEIS, please contact James Park, Project Manager, Division of Waste Management and Environmental Protection (DWMEP), Mail Stop T–8F5, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–001, by phone at 1 (800) 368–5642, extension 6935. For general or technical information associated with the safety and licensing of uranium milling facilities, please contact William Von Till, Branch Chief, Uranium Recovery Branch, DWMEP, Mail Stop T–8F5, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by phone at 1 (800) 368–5642, extension 0598.

SUPPLEMENTARY INFORMATION:

I. Introduction

As stated previously, the NRC is accepting comments on the Draft GEIS. Following the end of the public comment period, the NRC staff will publish a Final GEIS that addresses, as appropriate, the public comments on the Draft GEIS. The NRC expects to publish the Final GEIS by June 2009.

II. Further Information

The Draft GEIS may be accessed on the Internet at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/* by selecting ''NUREG–1910.'' Additionally, the NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. The Draft GEIS and its appendices may also be accessed through the NRC's Public Electronic Reading Room on the Internet at: *http://www.nrc.gov/reading-rm/adams.html.* If you either do not have access to ADAMS or if there is a problem accessing documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1 (800) 397–4209, 1 (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Information and documents associated with the Draft GEIS are also available for public review through the NRC Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* and at the NRC's Web site for the GEIS, *http://www.nrc.gov/materials/fuel-cycle-fac/licensing/geis.html.* Both information and documents associated with the Draft GEIS also are available for inspection at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (first floor), Rockville, Maryland. For those without access to the Internet, paper copies of any electronic documents may be obtained for a fee by

contacting the NRC's Public Document Room at 1–800–397–4209.

The draft GEIS and related documents may also be found at the following public libraries:

Albuquerque Main Library, 501 Copper NW., Albuquerque, New Mexico 87102, 505–768–5141;

Mother Whiteside Memorial Library, 525 West High Street, Grants, New Mexico 87020, 505–287–4793;

Octavia Fellin Public Library, 115 W Hill Avenue, Gallup, New Mexico 87301, 505–863–1291;

Natrona County Public Library, 307 East Second Street, Casper, Wyoming 82601, 307–332–5194;

Carbon County Public Library, 215 W Buffalo Street, Rawlins, Wyoming 82301, 307–328–2618;

Campbell County Public Library, 2101 South 4J Road, Gillette, Wyoming 82718, 307–687–0009;

Weston County Library, 23 West Main Street, Newcastle, Wyoming 82701, 307–746–2206;

Chadron Public Library, 507 Bordeaux Street, Chadron, Nebraska 69337, 308–432–0531;

Rapid City Public Library, 610 Quincy Street, Rapid City, South Dakota 57701, 605–394–4171.

Dated at Rockville, Maryland, this 29th day of September, 2008.

For the U.S. Nuclear Regulatory Commission.

Patrice M. Bubar,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E8–23341 Filed 10–2–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Subcommittee Meeting on Materials, Metallurgy & Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Materials, Metallurgy & Reactor Fuels will hold a meeting on Friday, October 24, 2008, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B3.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, October 24, 2008,—8:30 a.m.–12:30 p.m.

The Subcommittee will receive an update on the technical basis supporting changes to the fuel design criteria within 10 CFR 50.46 (b). The Subcommittee will hear presentations by and hold discussions with representatives of the NRC. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Mr. Christopher L. Brown (Telephone: 301–415–7111) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007, (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:45 a.m. and 5:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: September 24, 2008.

Cayetano Santos,

Chief, Reactor Safety Branch A, ACRS.

[FR Doc. E8–23347 Filed 10–2–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Economic Simplified Boiling Water Reactor (ESBWR); Notice of Meeting

The ACRS Subcommittee on the ESBWR will hold a meeting on October 21–22, 2008, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary to General Electric-Hitachi (GEH) Nuclear Energy and its contractors pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, October 21, 2008,—8:30 a.m.–5 p.m.

Wednesday, October 22, 2008,—8:30 a.m.–5 p.m.

The Subcommittee will review Chapters 7 and 14 of the Safety Evaluation Report with Open Items associated with the ESBWR Design Certification Application. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, GEH, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Harold J. Vandermolen, (Telephone: 301–415–6236) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007, (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:30 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: September 23, 2008.

Cayetano Santos,

Branch Chief.

[FR Doc. E8–23391 Filed 10–2–08; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28409; 812–13480]

Dodge & Cox Funds and Dodge & Cox Incorporated; Notice of Application

September 29, 2008.

AGENCY: Securities and Exchange Com mission (''Commission'').

ACTION: Notice of an application for an order under (a) section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: Dodge & Cox Funds (the ''Trust'') and Dodge & Cox Inc orporated (''Dodge & Cox'').

FILING DATES: The application was filed on January 18, 2008 and amended on April 16, 2008. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in the notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 24, 2008, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 555 California Street, 40th Floor, San Francisco, California 94104.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–6873 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (tel. (202) 551–5850).

Applicants' Representations

1. The Trust is organized as a Delaware statutory trust and is registered under the Act as an open-end management investment company. The Trust consists of five series and may offer addit ional series in the future (''Funds''). Dodge & Cox, a California corporation, is registered as an investment adviser under the Investment Advisers Act of 1940, and serves as the investment adviser to each Fund.[1]

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term investments. Other Funds may borrow money from the same or similar banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a security sold by a Fund has been delayed, or for other temporary purposes. Currently, the Trust has an overdraft facility with its custodian bank and a committed line of credit with a bank.

3. If a Fund were to borrow money under the committed line of credit or incur an overdraft with the custodian bank, the Fund would pay interest on the borrowed cash at a rate which would be higher than the rate that would earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants state that this differential represents the profit the bank would earn for serving as a middleman between a borrower and lender and is not attributable to any material difference in the credit quality or risk of such transactions. In addition, while bank borrowings generally could supply needed cash to cover unanticipated redemptions and sales fails, the borrowing Funds would incur commitment fees and/or other charges involved in obtaining a bank loan.

4. Applicants request an order that would permit the Funds to enter into master interfund lending agre ements (''Interfund Lending Agreements'') under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility (''Interfund Loan''). Applicants believe that the proposed credit facility would reduce the Funds' borrowing costs and enhance their ability to earn higher interest rates on short-term investments. Although the proposed credit facility would reduce the Funds' need to borrow from banks, the Funds would be free to establish committed lines of credit or other borrowing arrangements with unaffiliated banks.

5. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and certain Funds have insufficient cash on hand to satisfy such redemptions. When a Fund liquidates portfolio securities to meet redemption requests which normally are effected immediately, it often does not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities ''fails'' due to circumstances such as a delay in the delivery of cash to a Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if a Fund has undertaken to purchase securities using the proceeds from the securities sold. Alternatively, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same-day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity.

7. While bank borrowings generally could supply needed cash to cover unanticipated redemptions and sales fails, under the proposed credit facility a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to a Fund on any Interfund Loan (''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate,'' both as defined below. The Repo Rate on any day would be the highest rate available to a lending Fund from investing in overnight repurchase agreements. The Bank Loan Rate on any day would be calculated by the ''Interfund Lending Committee'' (as

[1] Applicants request that the relief apply to (a) any Fund of the Trust, (b) any successor entity to Dodge & Cox, (c) any other registered open-end management investment company or its series advised by Dodge & Cox or a person controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with Dodge & Cox (each, also a ''Fund''). The term ''successor'' is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization. All entities that currently intend to rely on the requested relief are named as applicants. Any other existing or future Funds that subsequently rely on the order will comply with the terms and conditions in the application.

defined below) each day an Interfund Loan is made according to a formula established by a Fund's board of directors or trustees (''Fund Board'') intended to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (*e.g.*, Federal funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. Each Fund Board would periodically review the continuing appropriateness of using the publicly available rate to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund Board.

9. The credit facility would be administered by investment professionals and administrative personnel from Dodge & Cox (the ''Interfund Lending Committee''). No member of Dodge & Cox's investment policy committee (''Investment Policy Committee'') for any Fund will serve as a member of the Interfund Lending Committee.[2] Under the proposed credit facility, the Investment Policy Committee for each participating Fund could provide standing instructions to participate daily as a borrower or lender. The Interfund Lending Committee on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodian. Once it determined the aggregate amount of cash available for loans and borrowing demand, the Interfund Lending Committee would allocate loans among borrowing Funds without any further communication from a Fund's Investment Policy Committee. Applicants expect far more available uninvested cash each day than borrowing demand. After the Interfund Lending Committee has allocated cash for Interfund Loans, the Interfund Lending Committee would invest any remaining cash in accordance with the standing instructions of the Investment Policy Committee or return remaining amounts for investment directly by a Fund's Investment Policy Committee.

10. The Interfund Lending Committee would allocate borrowing demand and cash available for lending among the Funds on what the Interfund Lending Committee believes to be an equitable basis, subject to certain administrative considerations applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each Interfund Loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund Board, including a majority of directors or trustees who are not ''interested persons'' of the Fund, as defined in section 2(a)(19) of the Act (''Independent Fund Board Members''), to ensure that both borrowing and lending Funds participate on an equitable basis.

11. The Interfund Lending Committee would (a) monitor the Interfund Loan Rate and the other terms and conditions of the loans; (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations; (c) ensure equitable treatment of each Fund; and (d) make quarterly reports to each Fund Board concerning any transactions by the Funds under the credit facility and the Interfund Loan Rate charged.

12. Dodge & Cox, through the Interfund Lending Committee, would administer the credit facility under the investment management contract with each Fund and would receive no additional compensation for its services. Dodge & Cox may in the future collect standard pricing, recordkeeping, bookkeeping, and accounting fees in connection with repurchase and lending transactions generally, including transactions through the credit facility. These fees would be no higher than those applicable for comparable bank loan transactions.

13. No Fund may participate in the credit facility unless: (a) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (b) the Fund has fully disclosed all material information concerning the credit facility in its prospectus and/or statement of additional infor mation (''SAI''); and (c) the Fund's participation in the credit facility is consistent with its investment objectives, limitations and organizational documents. In connection with the credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (d) under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) of the Act generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having Dodge & Cox as their common investment adviser and/or by having a common Fund Board and officers.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (a) Dodge & Cox, through the Interfund

[2] Each Fund's investments are managed solely by the members of an Investment Policy Committee, which consists of a team of portfolio managers.

Lending Committee, would administer the program as a disinterested fiduciary; (b) all Interfund Loans would consist only of uninvested cash reserves that the lending Fund otherwise would invest in short-term repurchase agreements or other short-term instruments; (c) the Interfund Loans would not involve a greater risk than such other investments; (d) the lending Fund would receive interest at a rate higher than it could otherwise obtain through such other investments; and (e) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other terms and conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security for the purposes of sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there will be no duplicative costs or fees to the Funds or shareholders, and that Dodge & Cox will receive no additional compensation for its services in administering the credit facility through the Interfund Lending Committee. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all of the participating Funds and their shareholders.

6. Section 18(f)(1) of the Act prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; provided, that immediately after the borrowing, there is asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit any affiliated person of a registered investment company, or affiliated persons of an affiliated person, when acting as principal, from effecting any joint transactions in which the company participates unless the transaction is approved by the Commission. Rule 17d–1(b) provides that in passing upon applications filed under the rule, the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies, and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms that are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Interfund Lending Committee will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is: (a) more favorable to the lending Fund than the Repo Rate; and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund: (a) Will be at an interest rate equal to or lower than any outstanding bank loan; (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral; (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days); and (d) will provide that, if an event of default by the Fund occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the proposed credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the proposed credit facility only on a secured basis. A Fund may not borrow through the proposed credit facility or from any

other source if its total outstanding borrowings immediately after such borrowing would be more than 33 1/3% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) Repay all its outstanding Interfund Loans; (b) reduce its outstanding indebtedness to 10% or less of its total assets; or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition 5 shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the Interfund Loan.

6. No Fund may lend to another Fund through the proposed credit facility if the loan would cause its aggregate outstanding loans through the proposed credit facility to exceed 15% of the lending Fund's current net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. The Fund's borrowings through the proposed credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the proposed credit facility must be consistent with its investment objectives, and limitations and organizational documents.

12. The Interfund Lending Committee will calculate total Fund borrowing and lending demand through the proposed credit facility, and allocate loans on an equitable basis among the Funds, without the intervention of any member of a Fund's Investment Policy Committee. The Interfund Lending Committee will not solicit cash for the proposed credit facility from any Fund or prospectively publish or disseminate loan demand data to any member of the Investment Policy Committee. The Interfund Lending Committee Team will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions of the Investment Policy Committee or return remaining amounts for investment directly by a Fund's Investment Policy Committee.

13. The Interfund Lending Committee will monitor the Interfund Loan Rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to each Fund Board concerning the participation of the Funds in the proposed credit facility and the terms and other conditions of any extensions of credit under the credit facility.

14. Each Fund Board, including a majority of the Independent Fund Board Members, will:

(a) Review, no less frequently than quarterly, each Fund's participation in the proposed credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions;

(b) Establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review, no less frequently than annually, the continuing appropriateness of the Bank Loan Rate formula; and

(c) Review, no less frequently than annually, the continuing appropriateness of each Fund's participation in the proposed credit facility.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, Dodge & Cox will promptly refer such loan for arbitration to an independent arbitrator selected by each Fund Board involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[3] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to each Fund Board setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction by it under the proposed credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transactions, including the amount, the maturity and the Interfund Loan Rate, the rate of interest available at the time on overnight repurchase agreements and commercial bank borrowings, and such other information presented to the Fund Board in connection with the review required by conditions 13 and 14.

17. The Interfund Lending Committee will prepare and submit to the Fund Board for review an initial report describing the operations of the proposed credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of the proposed credit facility, the Interfund Lending Committee will report on the operations of the proposed credit facility at the Fund Board's quarterly meetings.

In addition, for two years following the commencement of the proposed credit facility, the independent auditors for each Fund shall prepare an annual report that evaluates the Interfund Lending Committee's assertion that it has established procedures reasonably designed to achieve compliance with the terms and conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 10 and it shall be filed pursuant to Item 77Q3 of Form N–SAR, as such Statements or Form may be revised, amended, or superseded from time to time. In particular, the report shall address procedures designed to achieve the following objectives:

[3] If the dispute involves Funds with different Fund Boards, the respective Fund Boards will select an independent arbitrator that is satisfactory to each Fund.

(a) That the Interfund Loan Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate;

(b) Compliance with the collateral requirements as set forth in the application;

(c) Compliance with the percentage limitations on interfund borrowing and lending;

(d) Allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Fund Board; and

(e) That the interest rate on any Interfund Loan does not exceed the interest rate on any third-party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, each Fund's independent auditors, in connection with their audit examinations of the Fund, will continue to review the operation of the proposed credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the proposed credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its prospectus and/or SAI all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23343 Filed 10–2–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28420; 812–13533]

Forward Funds and Forward Management, LLC; Notice of Application

September 29, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would supersede an existing order that permits them to enter into and materially amend subadvisory agreements without shareholder approval (''Existing Order'').[1]

APPLICANTS: Forward Funds (the ''Trust'') and Forward Management, LLC (''Forward Management'').

DATES: *Filing Dates:* The application was filed on May 19, 2008 and amended on September 25, 2008.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 24, 2008, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549–1090; Applicants, 433 California Street, 11th Floor, San Francisco, CA 94104.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Branch Chief, or Michael W. Mundt, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F St., NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

Applicants' Representations

1. The Trust is organized as a Delaware statutory trust and is registered under the Act as an open-end management investment company. The Trust currently offers sixteen series (the ''Funds''), each with its own investment objectives, policies, and restrictions. Applicants request that the order apply to: (a) The Funds; and (b) any future series of the Trust and any other registered open-end management investment companies or series thereof that (1) use the ''manager-of-managers'' arrangement described in the application, (2) comply with the terms and conditions of the application, and (3) are advised by a Manager (as defined below) (the investment companies and their series, as well as the Funds, the ''Sub-Advised Funds'').[2]

2. Forward Management is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and serves as investment adviser to the Funds pursuant to an investment advisory agreement with the Trust, on behalf of the Funds (''Advisory Agreement''). The Advisory Agreement has been approved by the Trust's board of trustees (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust (the ''Independent Trustees''), as well as by the shareholders of the Funds. The term ''Manager'' refers to Forward Management and any existing or future entity controlling, controlled by, or under common control with Forward Management that is an investment adviser registered under the Advisers Act and any successor in interest thereto.[3]

3. Under the terms of the Advisory Agreement, the Manager provides investment advisory services to each Sub-Advised Fund and has the authority, subject to Board approval, to enter into investment subadvisory agreements (''Sub-Advisory Agreements'') with one or more subadvisers (''Sub-Advisers''). Each Sub-Adviser is registered under the Advisers Act. The Manager will monitor and evaluate the Sub-Advisers and recommend to the Board their hiring, retention or termination. Sub-Advisers recommended to the Board by the Manager are selected and approved by the Board, including a majority of the Independent Trustees. Each Sub-Adviser has discretionary authority to invest the assets or a portion of the assets of the relevant Sub-Advised Fund. For its services, the Manager receives a fee from the Sub-Advised Fund computed as a percentage of the Sub-Advised Fund's net assets.

4. Applicants request an order that would permit the Manager to hire Sub-Advisers and materially amend Sub-Advisory Agreements without obtaining

[1] *Forward Funds, et al.*, Investment Company Act Release Nos. 27777 (April 5, 2007) (notice) and 27814 (May 1, 2007) (order).

[2] All existing entities that currently intend to rely on the order are named as applicants. Any entity that relies on the order in the future will do so only in accordance with the terms and conditions of the application. If the name of any Sub-Advised Fund contains the name of a Sub-Adviser (as defined below), the name of the Manager that serves as the primary adviser to the Sub-Advised Fund will precede the name of the Sub-Adviser.

[3] A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

shareholder approval. The requested order would supersede the Existing Order to allow a Sub-Adviser to be compensated either (a) by the Manager out of the advisory fees it receives from the Sub-Advised Fund, or (b) directly by the Sub-Advised Fund out of its assets.[4] The conditions of the requested order are identical to the conditions in the Existing Order, except for the addition of condition 10, which addresses Sub-Adviser compensation paid directly by a Sub-Advised Fund. The requested relief will not extend to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Sub-Advised Fund or the Manager, other than by reason of serving as a Sub-Adviser to one or more of the Sub-Advised Funds (''Affiliated Sub-Adviser'').

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the Sub-Advised Funds' shareholders are relying on the Manager's experience to select one or more Sub-Advisers best suited to achieve a Sub-Advised Fund's investment objectives. Applicants assert that, from the perspective of an investor in the Sub-Advised Fund, the role of the Sub-Advisers is comparable to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Sub-Advisory Agreement would impose costs and unnecessary delays on the Sub-Advised Funds, and may preclude the Manager from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement and any Sub-Advisory Agreement with an Affiliated Sub-Adviser will remain subject to section 15(a) of the Act and rule 18f-2 under the Act.

4. Applicants state that for tax or other reasons as may be determined by the Board and the Manager to be relevant from time to time, certain Sub-Advised Funds may pay fees directly to the Sub-Adviser rather than having the Manager pay the Sub-Adviser out of its advisory fees. With respect to the Sub-Advised Funds that pay Sub-Advisers directly, any change to a Sub-Advisory Agreement that results in an increase in the total management and advisory fees payable by a Sub-Advised Fund will be required to be approved by the shareholders of the Sub-Advised Fund.

5. Applicants note that the Commission has proposed rule 15a–5 under the Act and agree that the requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.[5]

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Sub-Advised Fund may rely on the requested order, the operation of the Sub-Advised Fund in the manner described in the application will be approved by a majority of the Sub-Advised Fund's outstanding voting securities, as defined in the Act, or in the case of a Sub-Advised Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Sub-Advised Fund to the public.

2. Each Sub-Advised Fund will disclose in its prospectus the existence, substance and effect of the order. In addition, each Sub-Advised Fund will hold itself out to the public as employing the manager-of-managers arrangement described in the application. The prospectus relating to each Sub-Advised Fund will prominently disclose that the Manager has ultimate responsibility (subject to oversight by the Board) to oversee Sub-Advisers and to recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of a new Sub-Adviser, the Manager will furnish shareholders of the applicable Sub-Advised Fund all information about the new Sub-Adviser that would be included in a proxy statement. To meet this condition, the Manager will provide shareholders of the applicable Sub-Advised Fund with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

4. The Manager will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser unless such agreement, including the compensation to be paid thereunder, has been approved by the shareholders of the applicable Sub-Advised Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. When a change of Sub-Adviser is proposed for a Sub-Advised Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of such Sub-Advised Fund and its shareholders and does not involve a conflict of interest from which the Manager or an Affiliated Sub-Adviser derives an inappropriate advantage.

7. The Manager will provide general investment management services to each Sub-Advised Fund, including overall supervisory responsibility for the general management and investment of each Sub-Advised Fund's assets and, subject to review and approval by the Board, will: (a) Set the Sub-Advised Fund's overall investment strategies; (b) evaluate, select, and recommend Sub-Advisers to manage all or a part of the Sub-Advised Fund's assets; (c) when appropriate, allocate and reallocate the Sub-Advised Fund's assets among multiple Sub-Advisers; (d) monitor and evaluate the Sub-Advisers' investment performance; and (e) implement procedures reasonably designed to ensure compliance by the Sub-Adviser(s) with the Sub-Advised Fund's investment objectives, policies and restrictions.

8. No trustee or officer of the Trust, or director or officer of the Manager, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Adviser, except for (a) ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager, or (b) ownership of less than 1% of the

[4] Under the Existing Order, the Manager compensates each Sub-Adviser out of the fees paid to the Manager under the Advisory Agreement.

[5] Investment Company Act Release No. 26230 (Oct. 23, 2003).

outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by or is under common control with a Sub-Adviser.

9. The requested order will expire on the effective date of rule 15a-5 under the Act, if adopted.

10. For Sub-Advised Funds that pay a Sub-Adviser's fees directly from Fund assets, any changes to a Sub-Advisory Agreement that would result in an increase in the total management and advisory fees payable by a Sub-Advised Fund will be required to be approved by the shareholders of the Sub-Advised Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23365 Filed 10–2–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28411; 812–13491]

Invesco PowerShares Capital Management LLC, et al.; Notice of Application

September 29, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application to amend a prior order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to amend a prior order (''Prior Order'') [1] that permits (a) Open-end management investment companies whose portfolio securities include equity and/or fixed-income securities of U.S. issuers to issue shares (''Shares'') that can be redeemed only in large aggregations (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated prices; (c) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (d) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares. Applicants seek to amend the Prior Order in order to offer two new series (the ''Additional Funds'') and future series (''Future Foreign Funds,'' together with the Additional Funds, the ''Foreign Funds'') investing in foreign equity and fixed-income securities.

APPLICANTS: Invesco PowerShares Capital Management LLC, formerly known as PowerShares Capital Management LLC (the ''Adviser''), Invesco Aim Distributors, Inc., formerly known as AIM Distributors, Inc. (the ''Distributor''), and PowerShares Actively Managed Exchange-Traded Fund Trust (the ''Trust'').

FILING DATES: The application was filed on February 12, 2008, and amended on July 22, 2008. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 24, 2008, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: Adviser and Trust, 301 West Roosevelt Road, Wheaton, Illinois 60187, and Distributor, 11 Greenway Plaza, Houston, Texas 77046–1173

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870, or Marilyn Mann, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1520 (telephone (202) 551–5850).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware business trust. The Trust currently offers four series under the Prior Order (the ''Initial Funds,'' together with the Foreign Funds, the ''Funds'').[2] The Adviser, which is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''), or an entity controlling, controlled by or under common control with the Adviser (included in the term ''Adviser''), will serve as investment adviser to each Fund. The Adviser may in the future retain one or more sub-advisers (''Sub-Advisers'') to manage particular Funds' portfolios. Any Sub-Adviser will be registered under the Advisers Act. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act''), serves as the principal underwriter and distributor for the Funds.

2. The Trust is currently permitted to offer actively-managed exchange-traded funds investing in U.S. equity and fixed-income securities in reliance on the Prior Order. Applicants seek to amend the Prior Order to permit the Trusts to offer Foreign Funds that will invest in foreign equity and fixed-income securities.[3]

3. Applicants state that all discussions contained in the application for the Prior Order are equally applicable to the Foreign Funds, except as specifically noted by applicants (as summarized in this notice). Applicants assert that the Foreign Funds will operate in a manner identical to the Initial Funds and will comply with all of the terms, provisions and conditions of the Prior Order, as amended by the present application. Applicants believe that the requested relief meets the necessary exemptive standards.

Applicants' Legal Analysis

1. In connection with applicants' request for relief to permit the operations of Foreign Funds, applicants seek to amend the Prior Order to add relief from section 22(e) of the Act. Section 22(e) generally prohibits a registered investment company from

[1] PowerShares Capital Management, *et al.*, Investment Company Act Release Nos. 28140 (Feb. 1, 2008) (notice) and 28171 (Feb. 27, 2008) (order).

[2] The Initial Funds are the PowerShares Active AlphaQ Portfolio, PowerShares Active Alpha Multi-Cap Portfolio, PowerShares Active Mega-Cap Portfolio and PowerShares Active Low Duration Portfolio.

[3] The Additional Funds consist of the PowerShares Active International Equity Portfolio which will invest in equity securities of foreign issuers, and the PowerShares Active Sovereign Debt Portfolio which will invest in foreign government debt securities.

suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that the settlement of redemptions for the Foreign Funds is contingent not only on the settlement cycle of the markets in the United States, but also on currently practicable delivery cycles in local markets for the foreign securities held by the Foreign Funds. Applicants state that local market delivery cycles for transferring certain foreign securities to investors redeeming Creation Units, together with local market holiday schedules, will under certain circumstances require a delivery process in excess of seven calendar days for the Foreign Funds. Applicants request relief under section 6(c) of the Act from section 22(e) in such circumstances to allow the Foreign Funds to pay redemption proceeds up to 14 calendar days after the tender of any Creation Unit for redemption. Except as disclosed in the Foreign Fund's prospectus or statement of additional information (''SAI''), applicants expect that each Foreign Fund will be able to deliver redemption proceeds within seven days.[4] With respect to Future Foreign Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances similar to those described in the application exist.

2. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the SAI for each Foreign Fund will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days needed to deliver the proceeds for the relevant Foreign Fund. Applicants are not seeking relief from section 22(e) of the Act with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the same conditions as the Prior Order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23346 Filed 10–2–08; 8:45 am]

BILLING CODE 8011–01–P

[4] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28419; 812–13458]

WisdomTree Asset Management, Inc. and WisdomTree Trust; Notice of Application

September 29, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1) and 22(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: WisdomTree Asset Management, Inc. (the ''Advisor'') and WisdomTree Trust (the ''Trust'').

SUMMARY OF APPLICATION: Applicants request an order that permits: (a) Series of certain open-end management investment companies that utilize active management investment strategies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (d) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

FILING DATES: The application was filed on December 5, 2007 and amended on April 15, 2008 and September 26, 2008.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 24, 2008, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 380 Madison Avenue, 21st Floor, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel at (202) 551–6873, or Marilyn Mann, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (tel. 202–551–5850).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware statutory trust. The Trust will offer four new series: WisdomTree U.S. Equity Fund, WisdomTree International Equity Fund, WisdomTree Domestic Total Return Bond Fund, and WisdomTree International Total Return Bond (collectively, the ''New Funds''). The New Funds may invest in equity securities or fixed income securities traded in the U.S. or non-U.S. markets. Applicants request that the order apply to any future series of the Trust or of other open-end management companies that also may invest in equity securities or fixed-income securities traded in the U.S. or non-U.S. markets (''Future Funds''). Any Future Fund will be (a) advised by the Advisor or an entity controlling, controlled by, or under common control with the Advisor, and (b) comply with the terms and conditions of the order. The New Funds and Future Funds together are the ''Funds.'' Each Fund will operate as an actively-managed exchange-traded fund (''ETF'').

2. The Advisor, a Delaware corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to each Fund. The Advisor and the Trust may retain one or

more subadvisers to the Funds (each, a ''Subadvisor''). Any Subadvisor will be registered as an investment adviser under the Advisers Act. ALPS Distributors, Inc., a Colorado corporation, is registered as a broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act'') and will serve as the principal underwriter and distributor for the Funds (''Distributor'').[1]

3. Shares of the Funds will be sold at a price of between $25 and $100 per Share in Creation Units of between 50,000 and 100,000 Shares. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Trust, the Distributor and the transfer agent to the Trust (''Authorized Participant''). An Authorized Participant must be either: (a) A broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation (''NSCC''), or (b) a participant in the Depository Trust Company (''DTC,'' and such participant, ''DTC Participant''). Shares of each Fund generally will be sold in Creation Units in exchange for an in-kind deposit by the purchaser of a portfolio of securities designated by the Advisor (the ''Deposit Securities''), together with the deposit of a specified cash payment (''Cash Component''). The Cash Component is an amount equal to the difference between (a) the net asset value (''NAV'') per Creation Unit of the Fund and (b) the total aggregate market value per Creation Unit of the Deposit Securities.[2] Applicants state that in some circumstances it may not be practicable or convenient for a Fund to operate exclusively on an ''in-kind'' basis. The Trust reserves the right to permit, under certain circumstances, a purchaser of Creation Units to substitute cash in lieu of depositing some or all of the Deposit Securities.

4. An investor purchasing a Creation Unit from a Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase of Creation Units.[3] The maximum Transaction Fees relevant to each Fund will be fully disclosed in the prospectus (''Prospectus'') of such Fund and the method of calculating these Transaction Fees will be fully disclosed in its statement of additional information (''SAI''). All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant and it will be the Distributor's responsibility to transmit such orders to the Trust. The Distributor also will be responsible for delivering the Prospectus to those persons purchasing Creation Units, and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the Trust to implement the delivery of Shares.

5. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded at negotiated prices on a national securities exchange as defined in section 2(a)(26) of the Act (''Exchange''). It is expected that one or more member firms of a listing Exchange will be designated to act as a specialist and maintain a market for Shares on the Exchange (the ''Specialist''), or if Nasdaq is the listing Exchange, one or more member firms of Nasdaq will act as a market maker (''Market Maker'') and maintain a market for Shares.[4] Prices of Shares trading on an Exchange will be based on the current bid/offer market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

6. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. The Specialist, or Market Maker, in providing a fair and orderly secondary market for the Shares, also may purchase Creation Units for use in its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[5] Applicants expect that the price at which the Shares trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV, which should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

7. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from a Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit generally will receive (a) a portfolio of securities designated to be delivered for Creation Unit redemptions on the date that the request for redemption is submitted (''Fund Securities''), which may not be identical to the Deposit Securities required to purchase Creation Units on that date, and (b) a ''Cash Redemption Amount,'' that is cash in an amount equal to the difference between the NAV of the Shares being redeemed and the market value of the Fund Securities. An investor may receive the cash equivalent of a Fund Security in certain circumstances, such as if the investor is constrained from effecting transactions in the security by regulation or policy. A redeeming investor will pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

8. Neither the Trust nor any individual Fund will be marketed or otherwise held out as an ''open-end investment company'' or a ''mutual fund.'' Instead, each Fund will be marketed as an ''actively-managed exchange-traded fund.'' All marketing materials that describe the method of obtaining, buying or selling Shares, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from a Fund in Creation Units only. The same approach will be followed in the SAI, shareholder reports and any marketing or advertising materials issued or circulated in connection with the Shares. The Funds will provide

[1] All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Investing Fund (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[2] In addition to the list of names and amount of each security constituting the current Deposit Securities, it is intended that, on each day that a Fund is open, including as required by section 22(e) of the Act (''Business Day''), the Cash Component effective as of the previous Business Day, will be made available. The Exchange (as defined below) intends to disseminate, every 15 seconds, during regular trading hours, through the facilities of the Consolidated Tape Association, an approximate amount per Share representing the sum of the estimated Cash Component, plus the current value of the Deposit Securities, on a per Share basis.

[3] Where a Fund permits a purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Securities, including brokerage costs.

[4] If Shares are listed on the Nasdaq, no particular Market Maker will be contractually obligated to make a market in Shares, although Nasdaq's listing requirements stipulate that at least two Market Makers must be registered as Market Makers in Shares to maintain the listing. Registered Market Makers are required to make a continuous, two-sided market at all times or be subject to regulatory sanctions.

[5] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

9. The Funds' Web site will include the Prospectus and information about the Funds that is updated on a daily basis, including the mid-point of the bid-ask spread at the time of the calculation of NAV (''Bid/Ask Price''). On each Business Day, before the commencement of trading in Shares on the Exchange, each Fund will disclose the identities and quantities of the securities (''Portfolio Securities'') and other assets held in the Fund portfolio that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[6]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1) and 22(d) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Fund, as a series of an open-end management investment company, to issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 12(d)(1) of the Act

7. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

8. Applicants request that the order permit certain investment companies registered under the Act to acquire Shares beyond the limitations in section 12(d)(1)(A) and permit the Funds, any principal underwriter for the Funds, and any broker or dealer registered under the Exchange Act (''Brokers''), to sell Shares beyond the limitations in

[6] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (''T + 1''). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

section 12(d)(1)(B). Applicants request that these exemptions apply to: (1) any Fund that is currently or subsequently part of the same ''group of investment companies'' as the New Funds within the meaning of section 12(d)(1)(G)(ii) of the Act as well as any principal underwriter for the Funds and any Brokers selling Shares of a Fund to an Investing Fund (as defined below); and (2) each management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies'' as the Funds within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into a FOF Participation Agreement (as defined below) with a Fund (such management investment companies are referred to herein as ''Investing Management Companies,'' such unit investment trusts are referred to herein as ''Investing Trusts,'' and Investing Management Companies and Investing Trusts are ''Investing Funds''). Investing Funds do not include the Funds. Each Investing Trust will have a sponsor (''Sponsor'') and each Investing Management Company will have an investment adviser within the meaning of Section 2(a)(20)(A) of the Act (''Investing Fund Advisor'') that does not control, is not controlled by or under common control with the Advisor. Each Investing Management Company may also have one or more investment advisers within the meaning of Section 2(a)(20)(B) of the Act (each, an ''Investing Fund Subadvisor'').

9. Applicants assert that the proposed transactions will not lead to any of the abuses that section 12(d)(1) was designed to prevent. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

10. Applicants believe that neither the Investing Funds nor an Investing Fund Affiliate would be able to exert undue influence over the Funds.[7] To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the Investing Fund Advisor or Sponsor; any person controlling, controlled by, or under common with the Investing Fund Advisor or Sponsor; and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Advisor or advised or sponsored by the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Advisor or Sponsor (''Investing Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Investing Fund Subadvisor; any person controlling, controlled by, or under common control with the Investing Fund Subadvisor; and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Subadvisor or any person controlling, controlled by, or under common control with the Investing Fund Subadvisor (''Investing Fund's Subadvisory Group'').

11. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Subadvisor, employee or Sponsor of an Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Subadvisor, employee, or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

12. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, before approving any advisory contract under section 15 of the Act, will be required to determine that the advisory fees charged to the Investing Management Company are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. In addition, the Investing Fund Advisor, trustee of an Investing Trust (''Trustee'') or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation received from a Fund by the Investing Fund Advisor, Trustee or Sponsor, or an affiliated person of the Investing Fund Advisor, Trustee or Sponsor (other than any advisory fees), in connection with the investment by the Investing Fund in the Funds. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds set forth in Conduct Rule 2830 of the NASD (''Rule 2830'').

13. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company, or of any company relying on section 3(c)(1) or 3(c)(7) of the Act, in excess of the limits contained in section 12(d)(1)(A) of the Act.

14. To ensure that Investing Funds are aware of the terms and conditions of the requested order, the Investing Funds must enter into an agreement with the respective Funds (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in the Funds and not in any other investment company. The FOF Participation Agreement will further require any Investing Fund that exceeds the 5% or 10% limitation in section 12(d)(1)(A)(ii) or (iii), respectively, to disclose in its Prospectus that it may invest in ETFs and disclose, in ''plain English,'' in its Prospectus the unique characteristics of the Investing Funds, including but not limited to the expense structure and any additional expenses of investing in investment companies.

Section 17(a) of the Act

15. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second tier affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the

[7] An ''Investing Fund Affiliate'' is an Investing Fund Advisor, Investing Fund Subadvisor, Sponsor, promoter, and principal underwriter of an Investing Fund, and any person controlling, controlled by, or under common control with any of those entities. A ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund, and any person controlling, controlled by, or under common control with any of those entities.

other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Advisor or an entity controlling, controlled by or under common control with the Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Advisor or an entity controlling, controlled by or under common control with the Advisor (an ''Affiliated Fund'').[8]

16. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit in-kind purchases and redemptions by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (1) Holding 5% or more, or more than 25%, of the Shares of the Trust or one or more Funds; (2) an affiliation with a person with an ownership interest described in (1); or (3) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds. Applicants also request an exemption in order to permit each Fund to sell Shares to and redeem Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, any Investing Fund of which it is an affiliated person or second tier affiliate because of one or more of the following: (1) The Investing Fund holds 5% or more of the Shares of the Trust or one or more Funds; (2) an Investing Fund described in (1) is an affiliated person of the Investing Fund; or (3) the Investing Fund holds 5% or more of the shares of one or more Affiliated Funds.

17. Applicants contend that no useful purpose would be served by prohibiting affiliated persons or second tier affiliates of a Fund from purchasing or redeeming Creation Units through ''in-kind'' transactions. The deposit procedure for in-kind purchases and the redemption procedure for in-kind redemptions will be the same for all purchases and redemptions. Deposit Securities and Fund Securities will be valued under the same objective standards applied to valuing Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the affiliated persons and second tier affiliates described above to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by these persons of the Fund.

18. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that the consideration paid for the purchase or received for the redemption of Shares directly from a Fund by an Investing Fund (or any other investor) will be based on the NAV of the Shares. In addition, the securities received or transferred by the Fund in connection with the purchase or redemption of Shares will be valued in the same manner as the Fund's Portfolio Securities and thus the transactions will not be detrimental to the Investing Fund. Applicants also state that the proposed transactions will be consistent with the policies of each Investing Fund and Fund and with the general purposes of the Act. Applicants state that the FOF Participation Agreement will require an Investing Fund to represent that its ownership of Shares issued by a Fund is consistent with the investment policies set forth in the Investing Fund's registration statement.

Applicants' Conditions

The applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. Actively-Managed Exchange-Traded Fund Relief

1. Each Prospectus will clearly disclose that, for purposes of the Act, Shares are issued by a registered investment company and that the acquisition of Shares by investment companies and companies relying on sections 3(c)(1) or 3(c)(7) of the Act is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into a FOF Participation Agreement with the Fund regarding the terms of the investment.

2. As long as the Funds operate in reliance on the requested order, the Shares of the Funds will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Each Fund's Prospectus will prominently disclose that the Fund is an actively managed exchange-traded fund. Each Prospectus will prominently disclose that the Shares are not individually redeemable shares and will disclose that the owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

4. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) the prior Business Day's NAV and the Bid/Ask Price, and a calculation of the premium or discount of the Bid/Ask Price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for the life of the Fund, if shorter).

5. The Prospectus and annual report for each Fund will also include: (a) the information listed in condition A.4(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years (or for the life of the Fund, if shorter), and (b) calculated on a per Share basis for one-, five- and ten-year periods (or for the life of the Fund, if shorter), the cumulative total return and the average annual total return based on NAV and Bid/Ask Price.

6. On each Business Day, before commencement of trading in Shares on the Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Securities and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

7. The Advisor or Subadvisor, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized

[8] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of a Fund of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of Shares to an Investing Fund, is subject to section 17(e)(1) of the Act. The FOF Participation Agreement will also include this acknowledgement.

Participant may transact with the Fund) to acquire any Deposit Security for the Fund through a transaction in which the Fund could not engage directly.

8. The requested order will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed exchange-traded funds.

B. Section 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Subadvisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Subadvisory Group with respect to a Fund for which the Investing Fund Subadvisor or a person controlling, controlled by or under common control with the Investing Fund Subadvisor acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to assure that the Investing Fund Advisor and any Investing Fund Subadvisor are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the securities of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of trustees (''Board'') of a Fund, including a majority of the disinterested Board members, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Advisor, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–l under the Act) received from a Fund by the Investing Fund Advisor, or Trustee or Sponsor, or an affiliated person of the Investing Fund Advisor, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, or Trustee or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Subadvisor will waive fees otherwise payable to the Investing Fund Subadvisor, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Subadvisor, or an affiliated person of the Investing Fund Subadvisor, other than any advisory fees paid to the Investing Fund Subadvisor or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Subadvisor. In the event that the Investing Fund Subadvisor waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of the Fund, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will

notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD.

12. No Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23411 Filed 10–2–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28421; 812–13477]

First Trust Advisors L.P., et al.; Notice of Application

September 29, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

APPLICANTS: First Trust Advisors L.P. (the ''Advisor''), First Trust Portfolios L.P. (the ''Distributor'') and First Trust Exchange-Traded Fund III (the ''Initial Trust'').

SUMMARY OF APPLICATION: Applicants request an order that permits: (a) Series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; and (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units.

FILING DATES: The application was filed on January 14, 2008, and amended on July 14, 2008. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in the notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 24, 2008, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: 100 Warrenville Rd., Lisle, IL 60532.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Marilyn Mann, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (tel. 202–551–5850).

Applicants' Representations

1. The Initial Trust is an open-end management investment company registered under the Act and organized as a Massachusetts business trust. The Initial Trust will offer three initial series: the First Trust BRIC Equal Weight Fund, the First Trust Target Mega Cap Fund, and the First Trust Target International Mega Cap Fund (the ''Initial Funds''). Each Initial Fund's investment objective will be to provide capital appreciation by investing in stocks selected according to a quantitative screening methodology developed by the Advisor.

2. Applicants request that the order apply to any existing or future series (''Future Funds'') of any existing or future open-end management investment companies (''Future Trusts'') that will invest in equity securities traded in the U.S. markets and/or foreign equity securities. Any Future Fund will be (a) advised by the Advisor or an entity controlling, controlled by, or under common control with the Advisor, and (b) comply with the terms and conditions of the order. The Initial Funds and Future Funds together are the ''Funds'' and the Initial Trust and the Future Trusts together are the ''Trusts.'' Funds that invest all or a portion of their assets in foreign equity securities are each an ''International Fund.'' Each Fund will operate as an actively-managed exchange-traded fund (''ETF'').

3. The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and will serve as the investment adviser to the Funds. The Advisor may in the future retain one or more subadvisers (''Subadvisers'') to manage the Funds' portfolios. Any Subadviser will be registered under the Advisers Act. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act''), will serve as the principal underwriter and distributor for the Funds.[1]

4. Shares of the Funds will be sold at a price of between $20 and $50 per Share in Creation Units of between 25,000 and 150,000 Shares. All orders to purchase Creation Units must be placed with the Distributor by or through a

[1] All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

party that has entered into an agreement with a Fund and the Distributor (''Authorized Participant''). An Authorized Participant must be either: (a) A broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission, or (b) a participant in the Depository Trust Company (''DTC,'' and such participant, ''DTC Participant''). Shares of each Fund generally will be sold in Creation Units in exchange for an in-kind deposit by the purchaser of a portfolio of securities designated by the Advisor (the ''Deposit Securities''), together with the deposit of a relatively small specified cash payment (''Cash Component''). The Cash Component is an amount equal to the difference between (a) the net asset value (''NAV'') per Creation Unit of the Fund and (b) the total aggregate market value per Creation Unit of the Deposit Securities.[2] Applicants state that in some circumstances it may not be practicable or convenient for a Fund to operate exclusively on an ''in-kind'' basis. Each Fund reserves the right to permit, under certain circumstances, a purchaser of Creation Units to substitute cash in lieu of depositing some or all of the requisite Deposit Securities.

5. An investor purchasing a Creation Unit from a Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase of Creation Units.[3] The maximum Transaction Fees relevant to each Fund will be fully disclosed in the prospectus (''Prospectus'') or statement of additional information (''SAI'') of such Fund. All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant and it will be the Distributor's responsibility to transmit such orders to the respective Fund's transfer agent. The Distributor also will be responsible for delivering the Prospectus to those persons purchasing Creation Units, and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to a Fund to implement the delivery of Shares.

6. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded on a national securities exchange as defined in section 2(a)(26) of the Act (''Stock Exchange''). It is expected that one or more member firms of a listing Stock Exchange will be designated to act as a specialist and maintain a market for Shares on the Stock Exchange (the ''Specialist''), or if Nasdaq is the listing Stock Exchange, one or more member firms of Nasdaq will act as a market maker (''Market Maker'') and maintain a market for Shares.[4] Prices of Shares trading on a Stock Exchange will be based on the current bid/offer market. Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). The Specialist, or Market Maker, in providing a fair and orderly secondary market for the Shares, also may purchase Creation Units for use in its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[5] Applicants expect that the price at which the Shares trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV, which should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

8. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from a Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit generally will receive (a) a portfolio of securities designated to be delivered for Creation Unit redemptions on the date that the request for redemption is submitted (''Fund Securities''), which may not be identical to the Deposit Securities required to purchase Creation Units on that date, and (b) a ''Cash Redemption Payment,'' consisting of an amount calculated in the same manner as the Cash Component, although the actual amount of the Cash Redemption Payment may differ from the Cash Component if the Fund Securities are not identical to the Deposit Securities on that day. An investor may receive the cash equivalent of a Fund Security in certain circumstances, such as if the investor is constrained from effecting transactions in the security by regulation or policy. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

9. Neither a Trust nor any individual Fund will be marketed or otherwise held out as an ''open-end investment company'' or a ''mutual fund.'' Instead, each Fund will be marketed as an ''actively-managed exchange-traded fund.'' All marketing materials that describe the method of obtaining, buying or selling Shares, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may purchase or redeem Shares from a Fund in Creation Units only. The same approach will be followed in the SAI, shareholder reports and investor educational materials issued or circulated in connection with the Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

10. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include the Prospectus and other information about the Funds that is updated on a daily basis, including the mid-point of the bid-ask spread at the time of the calculation of NAV (''Bid/Ask Price''). On each Business Day, before the commencement of trading in Shares on the Stock Exchange, each Fund will disclose the identities and quantities of

[2] In addition to the list of names and amount of each security constituting the current Deposit Securities, it is intended that, on each day that a Fund is open, including as required by section 22(e) of the Act (''Business Day''), the Cash Component effective as of the previous Business Day, per outstanding Share of each Fund, will be made available. The Stock Exchange or a major market data vendor intends to disseminate widely, every 15 seconds, during regular trading hours, an approximate amount per Share representing the sum of the estimated Cash Component effective through and including the previous Business Day, plus the current value of the Deposit Securities, on a per Share basis.

[3] Where a Fund permits a purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Securities, including brokerage costs, and part or all of the spread between the expected bid and the offer side of the market relating to such Deposit Securities.

[4] If Shares are listed on the Nasdaq, no particular Market Maker will be contractually obligated to make a market in Shares, although Nasdaq's listing requirements stipulate that at least two Market Makers must be registered as Market Makers in Shares to maintain the listing. Registered Market Makers are required to make a continuous, two-sided market at all times or be subject to regulatory sanctions.

[5] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Shares.

the securities (''Portfolio Securities'') and other assets held in the Fund portfolio that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[6]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Fund, as a series of an open-end management investment company, to issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. The principal reason for the requested exemption is that settlement of redemptions for the International Funds is contingent not only on the settlement cycle of the United States markets, but also on currently practicable delivery cycles in local markets for underlying foreign securities held by the International Funds. Applicants state that local market delivery cycles for transferring certain foreign securities to investors redeeming Creation Units, together with local market holiday schedules, will under certain circumstances require a delivery process in excess of seven calendar days for the International Funds. Applicants request relief under section 6(c) of the Act from section 22(e) in such circumstances to allow the International Funds to pay redemption proceeds up to 12 calendar days after the tender of any Creation Unit for redemption. At all other times and except as disclosed in the relevant SAI, applicants expect that each International Fund will be able to deliver redemption proceeds within seven days.[7] With respect to Future Funds that are International Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances similar to those described in the application exist.

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the SAI for each International Fund will disclose those local holidays (over the period of at

[6] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (''T + 1''). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[7] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1.

least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days needed to deliver the proceeds for the relevant International Fund.

Sections 17(a)(1) and (2) of the Act

9. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person (''second tier affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Advisor or an entity controlling, controlled by or under common control with the Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Advisor or an entity controlling, controlled by or under common control with the Advisor (an ''Affiliated Fund'').

10. Applicants request an exemption from section 17(a), under sections 6(c) and 17(b), to permit in-kind purchases and redemptions by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (1) holding 5% or more, or more than 25%, of the outstanding Shares of the respective Trust or one or more Funds; (2) an affiliation with a person with an ownership interest described in (1); or (3) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds.

11. Applicants contend that no useful purpose would be served by prohibiting these affiliated persons or second tier affiliates of a Fund from purchasing or redeeming Creation Units through ''in-kind'' transactions. The deposit procedure for in-kind purchases and the redemption procedure for in-kind redemptions will be the same for all purchases and redemptions. Deposit Securities and Fund Securities will be valued under the same objective standards applied to valuing Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the affiliated persons and second tier affiliates described above to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by these persons of the Fund.

Applicants' Conditions

The applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. Each Prospectus will clearly disclose that, for purposes of the Act, Shares are issued by the Fund, which is a registered investment company and that the acquisition of Shares by investment companies and companies relying on sections 3(c)(1) or 3(c)(7) of the Act is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the Fund regarding the terms of the investment.

2. As long as the Funds operate in reliance on the requested order, the Shares of the Funds will be listed on a Stock Exchange.

3. Neither the Trusts nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Each Fund's Prospectus will prominently disclose that the Fund is an actively managed exchange-traded fund. Each Prospectus will prominently disclose that the Shares are not individually redeemable shares and will disclose that the owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

4. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) the prior Business Day's NAV and the Bid/Ask Price, and a calculation of the premium or discount of the Bid/Ask Price against the NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for the life of the Fund, if shorter).

5. The Prospectus and annual report for each Fund will also include: (a) the information listed in condition 4(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years (or for the life of the Fund, if shorter), and (b) calculated on a per Share basis for one-, five- and ten-year periods (or for the life of the Fund, if shorter), the cumulative total return and the average annual total return based on NAV and Bid/Ask Price.

6. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Securities and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

7. The Advisor or Subadvisor, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Security for the Fund through a transaction in which the Fund could not engage directly.

8. The requested order will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed exchange-traded funds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23366 Filed 10–2–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58678; File No. SR–Amex–2008–64]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving the Adoption of New Rule 478T To Set Forth the Temporary Procedures That Will Apply To Disciplinary Proceedings Pending as of the Closing Date of the Acquisition of Amex by NYSE Euronext

September 29, 2008.

On July 28, 2008, American Stock Exchange LLC, a Delaware limited

liability company (''Amex'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new rule to set forth the temporary procedures that would apply to the disciplinary proceedings pending with the Exchange as of the closing date of the acquisition of Amex by NYSE Euronext (''Transaction Date''). On August 7, 2008, the proposed rule change was published for comment in the **Federal Register**.[3] The Commission received no comments on the proposed rule change. This order grants approval to the proposed rule change.

Pursuant to an agreement dated January 17, 2008, NYSE Euronext, the ultimate parent company of NYSE, Inc. (''NYSE'') and NYSE Arca, Inc. (''NYSE Arca''), is acquiring Amex, through a series of mergers (''Mergers'').[4] Upon completion of the Mergers and Related Transactions, Amex will continue to operate as a national securities exchange under Section 6 of the Act and will be renamed NYSE Alternext US LLC (''NYSE Alternext US'').

In a separate proposed rule change adopting various rules in connection with the Mergers and Related Transactions, Amex proposes to adopt new NYSE Alternext US Rules 475, 476 and 477 as its disciplinary rules, which are substantially similar to the existing NYSE disciplinary rules.[5] To avoid any potential confusion to respondents in disciplinary matters that had been commenced by Amex and still pending as of the Transaction Date (each, a ''Legacy Disciplinary Proceeding''),[6] Amex proposes applying rules that are substantially similar to the current procedures governing Amex disciplinary proceedings to such Legacy Disciplinary Proceedings. Accordingly, Amex proposes to adopt new Rule 478T to set forth the temporary procedures that will apply to such Legacy Disciplinary Proceedings. This rule will become operative as of the closing of the Mergers and Related Transactions.

Currently, the procedural rules governing Amex disciplinary proceedings are set forth in portions of the Amex Constitution, Amex Rule 345, and the Rules of Procedure in Disciplinary Matters (collectively, the ''Legacy Disciplinary Procedural Rules''). Proposed NYSE Alternext US Rule 478T will effectively ''grandfather'' the substance of these Legacy Disciplinary Procedural Rules with respect to resolution of disciplinary matters by means of a settlement (*i.e.*, stipulation and consent) or hearing at NYSE Alternext US. The Legacy Disciplinary Procedural Rules, as incorporated in proposed Rule 478T(c), have been modified in certain respects from their current form, to account for certain changes in the disciplinary structures and processes at NYSE Alternext US that are expected as a consequence of the Mergers and Related Transactions.[7]

Amex proposes to replace the Amex roster of appointed hearing officers and hearing board members from which the chairman and members of individually-constituted disciplinary hearing panels are selected, with a new roster appointed by the Chairman of the NYSE Alternext US Board of Directors (''NYSE Alternext US Board'') pursuant to proposed NYSE Alternext US Rule 476(b). Notwithstanding the change in the manner in which the roster of hearing officers and hearing board members is assembled, the process of selection of hearing officers and hearing board members from that roster to serve on an individual hearing panel will not change.[8]

In addition, appeals from disciplinary determinations will be governed solely by the proposed NYSE Alternext US rules pertaining to appeals.[9] Specifically, Amex proposes to eliminate the Amex Adjudicatory Council (''AAC''), a body which currently hears appeals from determinations of Amex disciplinary panels, and whose decisions, in turn, can be further appealed to Amex's Board of Governors. Instead, these functions of the AAC will be performed by the NYSE Alternext US Board or by an official standing committee of NYSE Regulation (the ''NYSE Regulation Committee''), in the sole discretion of the NYSE Alternext US Board.[10] The NYSE Regulation Committee will be charged with the responsibility to review determinations in Legacy Disciplinary Proceedings[11] and render advisory opinions to the NYSE Alternext US Board, which will have the ultimate responsibility to rule on such appeals.[12] The NYSE Regulation Committee will be expanded to include at least four individuals who are associated with member organizations of NYSE Alternext US.[13]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58286 (August 1, 2008), 73 FR 46097 (''Amex Notice'').

[4] Immediately following the Mergers, NYSE Euronext plans to effectuate certain related transactions, as a result of which NYSE Alternext US will become a direct wholly-owned subsidiary of NYSE Group, Inc. (''NYSE Group''), the wholly-owned subsidiary of NYSE Euronext (''Related Transactions''). For a detailed description of the Mergers and Related Transactions, *see* Securities Exchange Act Release No. 58284 (August 1, 2008), 73 FR 46086 (SR–Amex–2008–62) (''Amex Merger Notice'').

[5] *See* Amex Merger Notice, *supra* note 4 and Securities Exchange Act Release No. 58673 (September 29, 2009) (order approving SR–Amex–2008–62).

[6] Paragraph (a) of proposed NYSE Alternext US Rule 478T(c) defines ''Legacy Disciplinary Proceedings'' to include disciplinary charges, executed (but not yet approved) stipulations and consents, suspensions, summary proceedings, and summary fine notices for minor rule violations.

[7] *See* paragraph (c) of proposed NYSE Alternext US Rule 478T(c).

[8] Amex notes that the proposed NYSE Alternext US roster of appointed hearing officers and hearing board members would be substantially similar to that of the NYSE.

[9] *See* proposed NYSE Alternext US Rules 475(c) and (j) and 476(e)–(g), and Amex Merger Notice, *supra* note 4.

[10] *See* paragraph (b) of proposed NYSE Alternext US Rule 478T(c).

[11] Section 3(f) of Legacy Article V of the Amex Constitution and Section 5(a) of Legacy Article IV of the Amex Constitution hold open the possibility that the NYSE Regulation Committee may also be charged with the responsibility to hear: (i) Appeals from suspensions of members and member organizations in view of their financial and/or operating condition and (ii) applications for reinstatement following such suspensions.

[12] Specifically, any review of a disciplinary decision shall be conducted by the NYSE Alternext US Board or the NYSE Regulation Committee, in the sole discretion of the NYSE Alternext US Board. Upon review, and with the advice of the NYSE Regulation Committee, the NYSE Alternext US Board, by the affirmative vote of a majority of the NYSE Alternext US Board then in office, may sustain any determination or penalty imposed, or both, may modify or reverse any such determination, and may increase, decrease or eliminate any such penalty, or impose any penalty permitted under the provisions of Rule 476. Unless the NYSE Alternext US Board otherwise specifically directs, the determination and penalty, if any, of the NYSE Alternext US Board after review shall be final and conclusive subject to the provisions for review of the Act.

[13] These new members of the NYSE Regulation Committee must include at least one of each of the following: (1) An individual associated with a member organization of NYSE Alternext US that engages in a business involving substantial direct contact with securities customers; (2) An individual associated with an member organization of NYSE Alternext US that is registered as a specialist and spends a substantial part of his or her time on the trading floor of NYSE Alternext US; (3) an individual associated with a member organization of NYSE Alternext US not registered as a specialist that spends a majority of his or her time on the trading floor of NYSE Alternext US and has as a substantial part of his business the execution of transactions on the trading floor of NYSE Alternext US for other than his or her own account or the account of his NYSE Alternext US member organization; and (4) an individual associated with a NYSE Alternext US Member Organization not registered as a specialist that spends a majority of his or her time on the trading floor of NYSE Alternext US and has as a substantial part of his or her business the execution of transactions on the trading floor of NYSE Alternext US for his own account or the account of his or her NYSE Alternext US Member Organization. *S*ee Securities Exchange Act Release No. 58285 (August 1, 2008), 73 FR 46117 (SR–NYSE–2008–60).

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulation thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(6) and 6(b)(7) of the Act [15] in that it provides a fair procedure for the discipline of members and persons associated with members. The Commission further finds that the proposed rule change provides NYSE Alternext US with the ability to comply, and with the authority to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules or regulations thereunder, or the rules of NYSE Alternext US.

Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–2008–64), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23314 Filed 10–2–08; 8:45 am]

BILLING CODE 8011–01–P

[14] In approving the proposal, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(6) and 15 U.S.C. 78f(b)(7).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58673; File Nos. SR–Amex–2008–62 and SR–NYSE–2008–60]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendments No. 1 and 4 Thereto, Relating to the Acquisition of the Amex by NYSE Euronext; Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval to a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Acquisition of the Amex by NYSE Euronext

September 29, 2008.

I. Introduction

On July 23, 2008, American Stock Exchange LLC, a Delaware limited liability company (''Amex''), 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 in connection with the acquisition of Amex by NYSE Euronext, a Delaware Corporation (''NYSE Euronext''). On July 30, 2008, Amex filed Amendment No. 1 to the proposed rule change. On August 7, 2008, the proposed rule change, as amended, was published for comment in the **Federal Register**.[3] Amex filed Amendment No. 2 to the proposed rule change on September 3, 2008, and withdrew Amendment No. 2 on September 4, 2008. Amex filed Amendment No. 3 on September 4, 2008, and withdrew Amendment No. 3 on September 5, 2008. Amex filed Amendment No. 4 on September 5, 2008.[4] The Commission received no comments on the proposed rule change. This order provides notice of filing of Amendment No. 4 to the proposed rule change, and grants accelerated approval to the proposed rule change, as modified by Amendments No. 1 and 4.

On July 23, 2008, the New York Stock Exchange LLC (''NYSE''), a New York limited liability company, filed with the Commission, pursuant to Section 19(b)(1) of the Act [5] and Rule 19b–4 thereunder,[6] a proposed rule change in connection with the acquisition of Amex by NYSE Euronext. On July 30, 2008, the NYSE filed Amendment No. 1 to the proposed rule change. On August 7, 2008, the proposed rule change, as amended, was published for comment in the **Federal Register**.[7] The Commission received no comments on the proposed rule change. This order grants approval to the proposed rule change, as modified by Amendment No. 1.

II. Background

On January 17, 2008, NYSE Euronext, Amex, Amex's parent companies (The Amex Membership Corporation (''MC'') and its direct wholly-owned subsidiary, AMC Acquisition Sub, Inc.), and several other entities created by NYSE Euronext and Amex in connection with the Mergers entered into an agreement (''Merger Agreement'') to effect a series of mergers (''Mergers'') as a result of which the successor to Amex, to be renamed ''NYSE Alternext US LLC'' (''NYSE Alternext US''), will become a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58284 (August 1, 2008), 73 FR 46086 (''Amex Notice'').

[4] In Amendment No. 4, Amex: (1) Made several technical, non-substantive clarifying changes to the proposed NYSE Alternext US LLC rules; (2) amended the proposed NYSE Alternext US LLC rules to provide for other Amex proposed rule changes that have been approved since this proposal was filed; (3) modified the description of Arca Securities, LLC (''Arca Securities) to include, among other things, a representation that, with respect to its oversight of Arca Securities, which will be an affiliated member of NYSE Alternext US LLC after the Mergers and Related Transactions (as described herein), NYSE Regulation, Inc. (''NYSE Regulation'') has agreed with Amex that it will provide a report to NYSE Alternext US LLC's Chief Regulatory Officer on a quarterly basis that: (a) Quantifies all open alerts (of which NYSE Regulation is aware) that identify Arca Securities as a participant that has potentially violated NYSE Alternext US LLC or Commission rules and (b) quantifies the number of all open investigations that identify Arca Securities as a participant that has potentially violated NYSE Alternext US LLC or Commission rules; (4) revised the rule filing to reflect that the parties to a multi-party regulatory services agreement (as described herein) have been modified to include NYSE Alternext US LLC, NYSE Group, Inc., NYSE Regulation, and Financial Industry Regulatory Authority (''FINRA''); (5) revised the rule filing to reflect a change to the Mergers and Related Transactions, which will not affect the final outcome of the Mergers and Related Transactions (as described herein) through which NYSE Alternext US LLC will become a subsidiary of NYSE Euronext; and (6) clarified that Arca Securities will not provide ''outbound'' routing services for NYSE Alternext US LLC until the relocation of the NYSE Alternext US LLC equities and options trading facilities to the NYSE trading floor or the electronic trading platform of NYSE or NYSE Arca, Inc., as applicable, and that, at a later time, NYSE Alternext US LLC will submit a separate rule filing to the Commission seeking approval to provide such outbound routing services to NYSE Alternext US LLC.

[5] 15 U.S.C. 78s(b)(1).

[6] 17 CFR 240.19b–4.

[7] *See* Securities Exchange Act Release No. 58285 (August 1, 2008,) 73 FR 46117 (SR–NYSE–2008–60) (''NYSE Notice'').

U.S. Regulated Subsidiary [8] of NYSE Euronext. The Board of Governors of Amex (''Amex Board'') approved the proposed rule change on May 21, 2008. In addition, the Mergers were approved by the requisite vote of MC members at the special meeting of MC members held on June 17, 2008. Immediately following the Mergers, NYSE Euronext plans to effectuate certain related transactions, as a result of which NYSE Alternext US will become a direct wholly-owned subsidiary of NYSE Group, Inc. (''NYSE Group''), the wholly-owned subsidiary of NYSE Euronext (''Related Transactions'').[9]

Upon completion of the Mergers and the Related Transactions, NYSE Alternext US will continue operating as a national securities exchange registered under Section 6 of the Act.[10] Following the Mergers and the Related Transactions, NYSE Euronext (and NYSE Group) will be the owner of three self-regulatory organizations (''SROs''): the NYSE; NYSE Arca, Inc. (''NYSE Arca''); and NYSE Alternext US.

Currently, all Regular Members and Options Principal Members [11] of Amex also have a membership interest in MC, a New York not-for-profit members-owned corporation which owns directly or indirectly 100% of Amex. The Mergers will have the effect of separating the right to trade on NYSE Alternext US from ownership in MC. Pursuant to the terms of the Merger Agreement, persons owning MC memberships prior to the Mergers will receive shares of the common stock of NYSE Euronext and cash in lieu of fractional shares, if applicable.[12] As described more fully below, following the Mergers, all trading rights on Amex appurtenant to MC memberships existing prior to the Mergers will be cancelled and physical and electronic access to NYSE Alternext US trading facilities will be made available to individuals and organizations through temporary trading permits (''86 Trinity Permits'') offered by NYSE Alternext US.[13]

Amex filed a proposed rule change to permit the Mergers and the Related Transactions and to accommodate the transformation of Amex from a wholly-owned subsidiary of MC [14] into an indirect wholly-owned subsidiary of NYSE Euronext and a direct wholly-owned subsidiary of NYSE Group. Amex proposes to adopt the NYSE Alternext US Operating Agreement, to eliminate the Amex Constitution,[15] and to amend the Amex Rules, which would become the NYSE Alternext US Rules, as described more fully below.[16] In general, the proposed changes are designed to facilitate the Mergers and Related Transactions and to conform the governance of NYSE Alternext US to that of the NYSE. Amex also is using this opportunity to make several other changes to its governing documents and rules to update language and make other minor changes that are not directly related to the proposed Mergers or Related Transactions.[17] The proposed rule change will become operative upon completion of the Mergers and the Related Transactions.

In addition, the NYSE filed a proposed rule change to amend certain organizational documents of NYSE Euronext, NYSE Group, and NYSE Regulation; the Trust Agreement of the NYSE Group Trust I (''Trust Agreement''); [18] the Independence Policy of NYSE Euronext (''NYSE Euronext Independence Policy''); and the NYSE Rules. The proposed changes, among other things, will make applicable to NYSE Alternext U.S. certain provisions of the organizational documents, the Trust Agreement, and the NYSE Euronext Independence Policy that are designed to maintain the independence of each NYSE Euronext SRO subsidiary's self-regulatory function, enable each such SRO to operate in a manner that complies with the federal securities laws, and facilitate each such SRO's ability and the ability of the Commission to fulfill their regulatory and oversight obligations under the Act.[19]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule changes are consistent with: (1) Section 6(b)(1) of the Act,[21] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act; (2) Section 6(b)(3) of the Act,[22] which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer (the ''fair representation requirement''); and (3) Section 6(b)(5) of the Act,[23] in that it is designed, among other things, 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.

As noted above, the Mergers and the Related Transactions will result in NYSE Euronext (and NYSE Group)

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[8] The term ''U.S. Regulated Subsidiary'' is defined in Article VII, Section 7.3(G) of the NYSE Euronext Bylaws.

[9] *See* Amex Notice, *supra* note 3, and Amendment No. 4 to the Amex Notice, *supra* note 4, for a more detailed description of the Mergers and the Related Transactions.

[10] 15 U.S.C. 78f.

[11] Amex allied members and associate members are not members of MC and therefore have trading rights on Amex but not voting rights in MC.

[12] *See* Amex Notice, *supra* note 3, for a more detailed description of the consideration that persons owning MC memberships will receive in connection with the Mergers.

[13] *See infra* Section III.C.2. for discussion of these temporary trading permits. At a later time, NYSE Alternext US anticipates replacing 86 Trinity Permits with equity trading licenses and options trading permits. NYSE Alternext US would have to file a proposed rule change to replace the 86 Trinity Permits with equity trading licenses and options trading permits.

[14] For a discussion of the current governance structure of MC and Amex, *see* Securities Exchange Act Release Nos. 50057 (July 22, 2004), 69 FR 45091 (July 28, 2004) (SR–Amex–2004–50) (notice of filing of proposed rule change relating to the NASD's sale of its interest in Amex to MC) and 50927 (December 23, 2004), 69 FR 78486 (December 30, 2004) (SR–Amex–2004–50) (order approving proposed rule change relating to the NASD's sale of its interest in Amex to MC) (''Amex Order'').

[15] Amex proposes to include relevant provisions of the Amex Constitution in the NYSE Alternext US Operating Agreement or the NYSE Alternext US Rules, as applicable.

[16] Amex also proposes, in connection with the Mergers, to eliminate the undertakings made by Amex to the Commission in connection with a proposed rule change in 2004. *See* Amex Order, *supra* note 14.

[17] For example, certain obsolete rules, including the rules relating the Intermarket Trading System Plan and certain rules which have been replaced by Auction and Electronic Market Integration Rules are proposed to be deleted. *See* Amex Notice, *supra* note 3, 73 FR at 46095.

[18] *See* Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120) (order approving combination between NYSE Group, Inc. and Euronext N.V.) (''NYSE/Euronext Order'') for a description of the Trust Agreement.

[19] *See* NYSE Notice, *supra* note 7. In addition, the NYSE also is making certain other changes to the NYSE Euronext Independence Policy, as discussed below in Section III.G.

[20] In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(1).

[22] 15 U.S.C. 78f(b)(3).

[23] 15 U.S.C. 78f(b)(5).

owning another SRO, NYSE Alternext US. The Commission believes that the ownership of NYSE Alternext US by the same public holding company that owns the NYSE and NYSE Arca would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[24] Further, the Commission does not believe that the ownership by one holding company of three U.S. exchanges presents any adverse competitive implications in the current marketplace. The Commission notes that it has previously approved proposals in which a holding company owns multiple SROs.[25] The Commission's experience to date with the issues raised by the ownership by a holding company of one or more SROs has not presented any concerns that have not been addressed, for example, by Commission approved measures at the holding company level that are designed to protect the independence of each SRO.

The Commission believes that the current market for cash equity and standardized options trading venues is highly competitive. Existing exchanges face significant competition from other exchanges and non-exchange entities, such as alternative trading systems, that trade the same or similar financial instruments.[26] In addition, there have been new entrants to the market. In this regard, the Nasdaq Options Market recently commenced the trading of standardized options contracts, the Commission in 2004 approved proposed rule changes to establish the Boston Options Exchange Facility of the Boston Stock Exchange, Inc, and the Commission in 2000 approved the registration of the International Securities Exchange, LLC (''ISE'') to trade standardized options contracts.[27] Further, the Chicago Board Options Exchange, Incorporated and ISE a few years ago commenced trading of cash equity securities.[28] In addition, another entity has recently applied and received approval for exchange registration, which provides evidence that such entity determined there are benefits in starting a new exchange to compete in the marketplace.[29] Accordingly, the Commission finds that Amex's and NYSE's proposed rule changes are consistent with Section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission will continue to monitor holding companies' ownership of multiple SROs for compliance with the Act, the rules and regulations thereunder, as well as the SROs' own rules.

A. Changes in Control of NYSE Alternext US; Ownership and Voting Limits

The NYSE Alternext US Operating Agreement will provide that NYSE Group, which will be the sole member of NYSE Alternext US, may not transfer or assign its limited liability company interest in NYSE Alternext US in whole or in part, to any person or entity, unless such transfer or assignment shall be filed with and approved by the Commission under Section 19 of the Act and the rules promulgated thereunder.[30] In addition, the Second Amended and Restated Certificate of Incorporation of NYSE Group (''NYSE Group Charter'') provides that NYSE Euronext, as the owner of all the issued and outstanding shares of stock of NYSE Group, may not transfer or assign its ownership interest in NYSE Group, in whole or in part, to any person or entity, unless such transfer or assignment shall be filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder.[31]

The Amended and Restated Certificate of Incorporation of NYSE Euronext (''NYSE Euronext Charter''), in turn, imposes limits on direct and indirect changes in control, which are designed to prevent any shareholder from exercising undue control over the operation of its SRO subsidiaries and to ensure that its SRO subsidiaries and the Commission are able to carry out their regulatory responsibilities under the Act.[32] Specifically, no person (either alone or together with its related persons) is entitled to vote or cause the voting of shares of stock of NYSE Euronext beneficially owned by such person or its related persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter. No person (either alone or together with its related persons) may acquire the ability to vote more than 10% of the then outstanding votes

[24] 15 U.S.C. 78f(b)(8).

[25] *See, e.g.*, Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.) (''NYSE/Arca Order''). *See also* Securities Exchange Act Release Nos. 58324 (August 7, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01) (approving the acquisition of Boston Stock Exchange, Inc. by The NASDAQ OMX Group, Inc.) (''BSE Order''), and 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31) (approving the acquisition of Philadelphia Stock Exchange, Inc. by The NASDAQ OMX Group, Inc.) (''Phlx Order'').

[26] *See, e.g.*, Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144, 40144 (July 11, 2008) (where the Commission recognized that ''[n]ational securities exchanges registered under Section 6(a) of the Act face increased competitive pressures from entities that trade the same or similar financial instruments * * *'').

[27] *See* Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (order approving a proposed rule change relating to, among other things, the establishment and operation of the NADAQ Options Market) (''NOM Approval Order''); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15) (order approving trading rules for BOX); 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (SR–BSE–2003–19) (order approving the Operating Agreement for BOX); and 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (File No. 10–127) (order approving the International Securities Exchange LLC's application for registration as a national securities exchange) (''ISE Exchange Registration Order'').

[28] *See* Securities Exchange Act Release Nos. 55389 (March 2, 2007), 72 FR 10575 (March 8, 2007) (order approving the establishment of CBOE Stock Exchange, LLC); 55392 (March 2, 2007), 72 FR 10572 (March 8, 2007) (order approving trading rules for non-option securities trading on CBOE Stock Exchange, LLC); 54528 (September 28, 2006), 71 FR 58650 (October 4, 2006) (order approving rules governing ISE's electronic trading system for equities).

[29] *See* Securities Exchange Act Release Nos. 57322 (February 13, 2008), 73 FR 9370 (February 20, 2008) (File No. 10–182) (notice of filing of application and Amendment No. 1 thereto by BATS Exchange, Inc. for registration as a national securities exchange) and 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (Findings, Opinion, and Order of the Commission approving BATS Exchange, Inc.'s application for registration as a national securities exchange) (''BATS Order'').

[30] *See* Section 3.03 of the proposed NYSE Alternext US Operating Agreement. Under current Amex rules, any sale, issuance, transfer or other disposition of any equity security of Amex, including any LLC interest, is subject to prior approval by the Commission pursuant to the rule filing procedure under Section 19 of the Act and the rules promulgated thereunder. *See* Section 9.3 of the Amended and Restated Amex Limited Liability Company Agreement and Amex Order, *supra* note 14. In addition, any sale, issuance, transfer or other disposition of any equity interest in MC or AMC Acquisition Sub, Inc. other than the sale or transfer of seats or membership interests in MC, is subject to prior approval by the Commission pursuant to the rule filing procedure under Section 19 of the Act and the rules promulgated thereunder. *See* Section 7(c) of the Second Restated Certificate of Incorporation of MC and Amex Order, *supra* note 14.

[31] *See* Article IV, Section 4 of the proposed NYSE Group Charter.

[32] *See* Article V of the NYSE Euronext Charter and NYSE/Euronext Order, supra note 18. The Commission notes that the NYSE Group Charter also includes similar ownership and voting limits. However, such limitations are not applicable so long as NYSE Euronext and NYSE Group Trust I collectively own all of the capital stock of NYSE Group. Instead, for so long as NYSE Group is a wholly owned subsidiary of NYSE Euronext, or as provided for in the Trust Agreement, there will be no transfer of the shares of NYSE Group held by NYSE Euronext without the approval of the Commission. If NYSE Group ceases to be wholly owned by NYSE Euronext or the Trust, the voting and ownership limitations in the NYSE Group Charter will apply. *Id.*

entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons not to vote shares of NYSE Euronext's outstanding capital stock.[33] In addition, no person (either alone or together with its related persons) may at any time beneficially own shares of stock of NYSE Euronext representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.[34] These limits will flow through to NYSE Alternext US . by virtue of the fact that NYSE Alternext US will be a wholly-owned subsidiary of NYSE Group, which in turn is wholly-owned by NYSE Euronext.[35]

Further, the current NYSE Euronext Charter provides that for so long as NYSE Euronext directly or indirectly controls the NYSE, NYSE Market Inc. (''NYSE Market''), NYSE Arca, NYSE Arca Equities, Inc. (''NYSE Arca Equities'') or any facility of NYSE Arca, the NYSE Euronext board of directors cannot waive the voting and ownership limits above the 20% threshold for any person if such person or its related persons is a member or member organization of the NYSE, an ETP Holder of NYSE Arca Equities, or an OTP Holder or an OTP Firm of NYSE Arca.[36] These ownership and voting limits as they apply to members of the NYSE and NYSE Arca will be extended to include members of NYSE Alternext US through changes to the Amended and Restated Bylaws of NYSE Euronext (''NYSE Euronext Bylaws'').[37] Specifically, the NYSE Euronext Bylaws will provide that, subject to its fiduciary obligations under applicable law, for so long as NYSE Euronext directly or indirectly controls NYSE Alternext US, the board of directors of NYSE Euronext shall not adopt any resolution to: (1) Approve the exercise of voting rights in excess of 20% of the then outstanding votes entitled to be cast on such matter unless the Board of Directors of NYSE Euronext determines that neither such person nor any of its related persons (as defined in the NYSE Euronext Charter) is a member (as defined in Section 3(a)(3)(A) of the Exchange Act) [38] of NYSE Alternext US (a ''NYSE Alternext US Member'');[39] and (2) approve the entering into of an agreement, plan or other arrangement under circumstances that would result in shares of stock of NYSE Euronext that would be subject to such agreement, plan or other arrangement not being voted on any matter, or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any person, either alone or together with its related persons, to vote, possess the right to vote or cause the voting of shares of stock of NYSE Euronext that would exceed 20% of the then outstanding votes entitled to be cast on such matter (assuming that all shares of stock of NYSE Euronext that are subject to such agreement, plan or other arrangement are not outstanding votes entitled to be cast on such matter), unless the Board of Directors of NYSE Euronext determines that neither such person nor any of its related persons is an NYSE Alternext US Member. Further, the NYSE Euronext Bylaws will provide that, for so long as NYSE Euronext directly or indirectly controls NYSE Alternext US, the Board of Directors of NYSE Euronext will not approve ownership of NYSE Euronext capital stock in excess of 20%, unless the Board of Directors of NYSE Euronext determines that neither such person, nor any of its related persons, is a NYSE Alternext US Member.

The Commission finds that the proposed changes to NYSE Euronext Bylaws and the proposed restrictions on transfer and assignment of NYSE Group's limited liability company interest in NYSE Alternext US, together with the existing restrictions on transfer and assignment of NYSE Euronext's ownership interest in NYSE Group and the existing ownership and voting limitations in NYSE Euronext's Certificate, are designed to prevent any person or entity from exercising undue control over the operation of NYSE Alternext US. These proposed changes are also designed to ensure that NYSE Alternext US and the Commission are able to carry out their regulatory obligations under the Act and thereby minimize the potential that a person or entity could improperly interfere with or restrict the ability of the Commission or NYSE Alternext US to effectively carry out their respective regulatory oversight responsibilities under the Act.

B. Management of NYSE Alternext US

1. Relationship Between NYSE Alternext US, NYSE Euronext and NYSE Group; Jurisdiction Over NYSE Euronext and NYSE Group

After the Mergers and the Related Transactions, NYSE Alternext US will become an indirect wholly-owned subsidiary of NYSE Euronext and a direct wholly-owned subsidiary of NYSE Group. Although these entities are not SROs and, therefore, will not themselves carry out regulatory functions, their activities with respect to the operation of NYSE Alternext US must be consistent with, and not interfere with, NYSE Alternext US's self-regulatory obligations. Proposed changes to the NYSE Euronext Bylaws, the NYSE Group Charter, the Second Amended and Restated Bylaws of NYSE Group (''NYSE Group Bylaws''), and the Trust Agreement will make applicable to NYSE Alternext US [40] certain provisions of NYSE Euronext and NYSE Group organizational documents, and provisions of the Trust Agreement, that are designed to maintain the independence of NYSE Alternext US's self-regulatory function, enable NYSE Alternext US to operate in a manner that complies with the federal securities laws, and facilitate NYSE Alternext US's ability and the ability of the Commission to fulfill their regulatory and oversight obligations under the Act.[41]

[33] *See* NYSE/Euronext Order, *supra* note 18 and NYSE Euronext Charter, Article V, Section 1(A). Pursuant to the NYSE Euronext Charter, NYSE Euronext shall disregard any such votes purported to be cast in excess of these limitations.

[34] *See* NYSE/Euronext Order, *supra* note 18, and NYSE Euronext Charter, Article V, Section 2(A). In the event that a person, either alone or together with its related persons, beneficially owns shares of stock of NYSE Euronext in excess of the 20% threshold, such person and its related persons will be obligated to sell promptly, and NYSE Euronext will be obligated to purchase promptly, to the extent that funds are legally available for such purchase, that number of shares necessary to reduce the ownership level of such person and its related persons to below the permitted threshold, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding. *See* NYSE Euronext Charter, Article V, Section 2(D).

[35] Further, solely for the purposes of the definition of ''related person'' in the NYSE Euronext Charter, which incorporates in certain respects the definition of ''member'' and ''member organization'' as defined in the rules of the NYSE, the NYSE is amending (1) the definition of ''member'' in its rules to include any ''member'' (as defined in Section 3(a)(3)(A)(i) of the Act) of NYSE Alternext US, and (2) the definition of ''Member Organization'' in its rules to include any ''member'' (as defined in Section 3(a)(3)(A)(ii), 3(a)(3)(A)(iii) and 3(a)(3)(A)(iv) of the Act) of NYSE Alternext US. *See* NYSE Notice, *supra* note 7.

[36] *See* NYSE Euronext Charter, Article V, Sections 1(C)(3) and 2(C)(4).

[37] Similar changes are being made to the NYSE Group Charter. *See* NYSE Notice, *supra* note 7.

[38] 15 U.S.C. 78c(a)(3)(A).

[39] Any such person that is a ''related person'' (as defined in the NYSE Euronext Charter) of such NYSE Alternext Member will also deemed to be a ''NYSE Alternext Member'' for the purposes of the NYSE Euronext Bylaws, as the context may require. *See* NYSE Euronext Bylaws, Section 10.12(A)(1).

[40] The definitions of U.S. Regulated Subsidiaries in the NYSE Euronext Bylaws and Regulated Subsidiaries in the NYSE Group Charter will be amended to include NYSE Alternext US.

[41] Provisions of the organizational documents of NYSE Euronext, NYSE Group, and NYSE Regulation, the Trust Agreement, and the NYSE Euronext Independence Policy will be rules of NYSE Alternext U.S. because they are stated policies, practice, or interpretations of NYSE Alternext US, as defined in Rule 19b–4 under the

In particular, the NYSE Euronext Bylaws and NYSE Group Charter will specify, as applicable, that NYSE Euronext and NYSE Group and their respective officers, directors and employees whose principal place of business and residence is outside of the United States shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts and the Commission for the purposes of any suit, action, or proceeding pursuant to the United States federal securities laws and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of the NYSE Alternext US.[42] Further, NYSE Euronext and NYSE Group have agreed to provide the Commission with access to their books and records.[43] NYSE Euronext and NYSE Group also agreed to keep confidential non-public information relating to the self-regulatory function [44] of NYSE Alternext US and not to use such information for any commercial purposes.[45] In addition, the NYSE Euronext and NYSE Group Boards, as well as their officers and employees are required to give due regard to the preservation of the independence of NYSE Alternext US's self-regulatory function.[46] Similarly, the NYSE Euronext and NYSE Group Boards would be required to take into consideration the ability of NYSE Alternext U.S. to carry out its responsibilities under the Act.[47] Finally, the NYSE Euronext Bylaws, NYSE Group Charter, and NYSE Group Bylaws require that for so long as NYSE Euronext (and NYSE Group, as applicable) controls NYSE Alternext US, any amendment to or repeal of the NYSE Euronext Charter or NYSE Euronext Bylaws (and NYSE Group Charter or NYSE Group Bylaws, as applicable) must either be (i) filed with or filed with and approved by the Commission under Section 19 of the Act [48] and the rules promulgated thereunder, or (ii) submitted to the boards of directors of the NYSE, NYSE Market, NYSE Regulation, NYSE Arca, NYSE Arca Equities and NYSE Alternext US or the boards of directors of their successors, and if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Act [49] and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be.[50]

The Commission believes that the NYSE Euronext Bylaws, the NYSE Group Charter, the NYSE Group Bylaws, and the Trust Agreement as amended to accommodate the Mergers and Related Transactions, are designed to facilitate NYSE Alternext US's ability to fulfill its self-regulatory obligations and are, therefore, consistent with the Act. In particular, the Commission believes these changes are consistent with Section 6(b)(1) of the Act,[51] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

Under Section 20(a) of the Act[52] any person with a controlling interest in NYSE Alternext US would be jointly and severally liable with and to the same extent that NYSE Alternext US is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act [53] creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, Section 21C of the Act [54] authorizes the Commission to enter a cease-and-desist order against any person who has been ''a cause of'' a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation.

2. Governance of NYSE Alternext US

Following the Mergers and the Related Transactions, the governance structure of NYSE Alternext US will be substantially similar to that of the NYSE. The Board of Directors of NYSE Alternext US (''NYSE Alternext US Board'') will be composed of a number of directors as determined by NYSE Group from time to time, as sole owner of NYSE Alternext US. In addition, the NYSE Alternext US Board will be composed as follows: (i) a majority of the directors of the NYSE Alternext US Board will be US Persons [55] who are members of the NYSE Euronext board and who are independent under the NYSE Euronext Independence Policy [56]

Act. Accordingly, Amex filed with the Commission the NYSE Euronext Charter, the NYSE Euronext Bylaws, the NYSE Group Charter, the NYSE Group Bylaws, the NYSE Euronext Independence Policy, the Third Amended and Restated Bylaws of NYSE Regulation (''NYSE Regulation Bylaws''), and the Trust Agreement and Amendment No. 1 to the Trust Agreement.

[42] *See* Section 7.1 of proposed NYSE Euronext Bylaws and Article IX of proposed NYSE Group Charter. *See also* Section 5.4 of the Trust Agreement.

[43] *See* Sections 8.3 and 8.4 of proposed NYSE Euronext Bylaws and Article X of proposed NYSE Group Charter. For so long as the NYSE Euronext (or NYSE Group, as applicable) directly or indirectly control NYSE Alternext US, their books, records, premises, officers, directors and employees shall be deemed to be those of NYSE Alternext US for purposes of and subject to oversight pursuant to the Act. *See* Section 8.4 of proposed NYSE Euronext Bylaws and Article X of proposed NYSE Group Charter. *See also* Section 6.2(a) of the Trust Agreement.

[44] This requirement to keep confidential non-public information relating to the self-regulatory function shall not limit the Commission's ability to access and examine such information or limit the ability of directors, officers, or employees of NYSE Euronext and NYSE Group from disclosing such information to the Commission. *See* Section 8.1(A) of proposed NYSE Euronext Bylaws and Article X of the proposed NYSE Group Charter. Holding companies with SRO subsidiaries have undertaken similar commitments. *See, e.g.,* Securities Exchange Act Release No. 56955 (December 13, 2007), 72 FR 71979, 71983 (December 19, 2007) (SR–ISE–2007–101) (order approving the acquisition of International Securities Exchange, LLC's parent, International Securities Exchange Holdings, Inc., by Eurex Frankfurt AG) and Phlx Order, *supra* note 24 at 73 FR 42878. *See also* Section 6.1(a) of the Trust Agreement and Amendment No. 1 to the Trust Agreement.

[45] *See* Section 8.1 of the proposed NYSE Euronext Bylaws and Article X of the proposed NYSE Group Charter. *See also* Section 6.1(a) of the Trust Agreement and Amendment No. 1 to the Trust Agreement.

[46] *See* Section 9.4 of the proposed NYSE Euronext Bylaws and Article XI of the proposed NYSE Group Charter. *See also* Section 5.1(b) of the Trust Agreement.

[47] *See* Section 3.15 of the proposed NYSE Euronext Bylaws and Article V of the proposed NYSE Group Charter. *See also* Section 5.1(a)(i) of the Trust Agreement.

[48] 15 U.S.C. 78s.

[49] *Id.*

[50] *See* Sections 10.10 and 10.13 of the proposed NYSE Euronext Bylaws, Article XII of the proposed NYSE Group Charter, and Section 7.9 of the proposed NYSE Group Bylaws. *See also* Section 8.2 of the Trust Agreement and Amendment No. 1 to the Trust Agreement.

[51] 15 U.S.C. 78f(b)(1).

[52] 15 U.S.C. 78t(a).

[53] 15 U.S.C. 78t(e).

[54] 15 U.S.C. 78u–3.

[55] A ''US Person'' shall mean, as of the date of his or her most recent election or appointment as a director any person whose domicile as of such date is and for the immediately preceding 24 months shall have been the United States. *See* Section 2.03 of the proposed NYSE Alternext US Operating Agreement.

[56] *See* the proposed NYSE Euronext Independence Policy. *See also* Section 3.4 of the proposed NYSE Euronext Bylaws for the independence requirements of the board of directors of NYSE Euronext. Generally, a director will not be independent if the director has a relationship with or an interest in NYSE Euronext or its subsidiaries; a member of the NYSE or NYSE

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(each a ''NYSE Euronext Independent Director''); and (ii) at least twenty percent of the directors will be persons who are not members of the board of directors of NYSE Euronext and who do not need to be independent under the NYSE Euronext Independence Policy (''Non-Affiliated Directors'').[57]

NYSE Group will appoint or elect as Non-Affiliated Directors the candidates nominated by the nominating and governance committee of NYSE Euronext (''NYSE Euronext NGC'') (such candidates the ''Non-Affiliated Director candidates'').[58] The NYSE Euronext NGC will be obligated to designate as Non-Affiliated Director candidates the persons recommended by the newly established Director Candidate Recommendation Committee of NYSE Alternext US (''NYSE Alternext US DCRC'');[59] provided, however, if there are candidates who have received a plurality of the votes cast by the NYSE Alternext US members pursuant to the petition process described below in this section, the NYSE Euronext NGC will be obligated to designate such candidates as Non-Affiliated Director candidates.[60]

The Non-Affiliated Director candidates that the NYSE Alternext US DCRC recommends to the NYSE Euronext NGC will be announced to NYSE Alternext US member organizations. Within two weeks after the announcement, NYSE Alternext US members may nominate candidates for Non-Affiliated Director by written petition filed with NYSE Alternext US. A valid petition must be, among other things, endorsed by at least 10 percent of the signatures eligible to endorse a candidate.[61] The eligibility of any Non-Affiliated Director candidate nominated in any such petition will be determined by the NYSE Euronext NGC, in its sole discretion.

If no petitions are submitted within two weeks after the dissemination of the report of the NYSE Euronext NGC, the NYSE Euronext NGC will nominate the candidates for Non-Affiliated Directors that the NYSE Alternext US DCRC initially recommended. If one or more valid petitions are submitted, NYSE Alternext US members will be allowed to vote on the entire group of potential candidates. Each member organization will have one vote per trading license or permit held by it.[62] The persons with the highest number of votes will be the candidates recommended to the NYSE Euronext NGC.

Amex has represented that immediately following the Mergers and the Related Transactions, the NYSE Alternext US Board will have five directors, one of which will be a Non-Affiliated Director selected by NYSE Group from among the six Industry Governors serving on the Amex Board immediately prior to the Mergers.[63] The initial directors on the NYSE Alternext US Board will serve one-year terms until their successors are duly elected.[64]

The NYSE Alternext US Board may create one or more committees composed of NYSE Alternext US directors.[65] As with the NYSE and NYSE Arca (as well as other NYSE Euronext subsidiaries except NYSE Regulation), Amex expects that the committees of the NYSE Euronext board of directors will perform for NYSE Alternext US the board committee functions relating to audit, governance, and compensation.[66] The NYSE Alternext US Board also may create committees composed in whole or part of individuals who are not directors.[67] Amex proposes that the day-to-day business of NYSE Alternext US be managed by the officers of NYSE Alternext US, appointed by, and subject to the direction of, the NYSE Alternext US Board.[68] NYSE Alternext US will have such officers as its Board may deem advisable.[69] For so long as NYSE Euronext directly or indirectly owns all of the equity interest of NYSE Group and NYSE Group holds 100 percent of the limited liability company interest of NYSE Alternext US, the Chief Executive Officer (''CEO'') of NYSE Alternext US will be a US Person.[70]

The Commission finds that the proposed governance structure of NYSE Alternext US is consistent with the Act, and in particular that the proposed composition of the NYSE Alternext US Board is consistent with Section 6(b)(1) of the Act, which requires, among other things, that a national securities exchange be organized to carry out the purposes of the Act and comply with the requirements of the Act. The Commission previously has stated its belief that the inclusion of public, non-

Arca; or an issuer listed on the NYSE or NYSE Arca. These independence policy provisions are being expanded to equally apply to NYSE Alternext US and its members and issuers. *See* NYSE Notice, *supra* note 7.

[57] For purposes of calculation of the minimum number of Non-Affiliated Directors, if twenty percent of the directors is not a whole number, such number of directors to be nominated and selected by NYSE Alternext US members will be rounded up to the next whole number. *See* Section 2.03 of the proposed NYSE Alternext US Operating Agreement.

Directors of NYSE Alternext US will serve for one-year terms and will hold office until their successors are elected. There will be no limit on the number of terms a director may serve on the NYSE Alternext US Board. The Commission finds one-year terms consistent with the Act and notes that establishing one-year terms for directors is consistent with other proposals previously approved by the Commission. *See* Phlx Order *supra* note 25. Further, the Commission notes that the Commission approved one-year terms for both NYSE Euronext and NYSE Group boards. *See* NYSE/Euronext Order, *supra* note 18, and NYSE/Arca Order, *supra* note 25.

[58] *See* Section 2.03(a)(iii) of the proposed NYSE Alternext US Operating Agreement.

[59] *Id.* On an annual basis, the NYSE Alternext US Board will appoint the NYSE Alternext US DCRC composed of individuals who are: (i) associated with a member organization that engages in a business involving substantial direct contact with securities customers, (ii) associated with a member organization and registered as a specialist and spend a substantial part of their time on the NYSE Alternext US trading floor, (iii) associated with a member organization and spend a majority of their time on the NYSE Alternext US trading floor and have as a substantial part of their business the execution of transactions on the NYSE Alternext US trading floor for other than their own account or the account of their member organization, but are not registered as a specialist, or (iv) associated with a member organization and spend a majority of their time on the NYSE Alternext US trading floor and have as a substantial part of their business the execution of transactions on the NYSE Alternext US trading floor for their own account or the account of their member organization, but are not registered as a specialist. The NYSE Alternext US Board will appoint such individuals after appropriate consultation with representatives of member organizations. *See* Section 2.03 of the proposed NYSE Alternext US Operating Agreement.

[60] *See* Sections 2.03(a)(iii)–(v) of the proposed NYSE Alternext US Operating Agreement.

[61] Each member organization in good standing shall be entitled to one signature for each trading license or permit held by it. No trading license or permit holder, either alone or together with its affiliates may account for more than 50 percent of the signatures endorsing a particular candidate, and any signatures of such trading license or permit holder, either alone or together with its affiliates, in excess of such 50 percent limitation shall be disregarded. *See* Section 2.03 of the proposed NYSE Alternext US Operating Agreement.

[62] No trading license or permit holder, either alone or together with its affiliates, may account for more than 20 percent of the votes cast for a particular candidate, and any votes cast by such trading license or permit holder, either alone or together with its affiliates, in excess of such 20 percent limitation will be disregarded. *See* Section 2.03(a)(5) of the NYSE Alternext US Operating Agreement. *See* Section 2.03(a)(V) of the proposed NYSE Alternext US Operating Agreement.

[63] *See* Amex Notice, *supra* note 3, 73 FR at 46090.

[64] *See* Amex Notice, *supra* note 3, 73 FR at 46080.

[65] *See* Section 2.03(h) of the proposed NYSE Alternext US Operating Agreement.

[66] Each of these NYSE Euronext committees is composed solely of directors meeting the independence requirements of NYSE Euronext. *See* NYSE/Euronext Order, *supra* note 32.

[67] For example, Amex notes that it currently anticipates that NYSE Alternext US will retain the Committee on Securities, but will not retain the Committee for Appointment and Approval of Supplemental Registered Options Traders and Remote Registered Options Traders, each a non-board committee of Amex. The Exchange, along with NYSE Euronext, is currently evaluating whether other non-board committees of Amex should be retained by NYSE Alternext US and what changes to the NYSE Alternext US rules such decision may require. *See* Amex Notice, *supra* note 3, 73 FR at 46091.

[68] *See* Amex Notice, *supra* note 3, 73 FR 46091.

[69] *Id.*

[70] *See* Section 2.04 of the proposed NYSE Alternext US Operating Agreement.

industry representatives on exchange oversight bodies is critical to an exchange's ability to protect the public interest.[71] Further, public representatives help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process. The Commission believes that public directors can provide unique, unbiased perspectives, which should enhance the ability of the NYSE Alternext US Board to address issues in a non-discriminatory fashion and foster the integrity of NYSE Alternext US. The Commission also finds that the composition of the NYSE Alternext US Board will satisfy Section 6(b)(3) of the Act,[72] which requires that one or more directors be representative of issuers and investors and not be associated with a member of the exchange or with a broker or dealer.

The fair representation requirement in Section 6(b)(3) of the Act is intended to give members a voice in the selection of the exchange's directors and the administration of its affairs. The Commission finds that the requirement that at least twenty percent of the NYSE Alternext US Directors be Non-Affiliated Directors, and the process for selecting such Non-Affiliated Directors, are designed to ensure the fair representation of NYSE Alternext US members on the NYSE Alternext US Board. The Commission believes that the method for selecting the Non-Affiliated Directors allows members to have a voice in NYSE Alternext US's use of its self-regulatory authority. As detailed above, the NYSE Alternext US DCRC is composed solely of persons associated with NYSE Alternext US members and is selected after appropriate consultation with NYSE Alternext US members. In addition, the proposed NYSE Alternext US Operating Agreement includes a process by which members can directly petition and vote for representation on the NYSE Alternext US Board. The Commission therefore finds that the process for selecting the Non-Affiliated Directors to the NYSE Alternext US Board is consistent with Section 6(b)(3) of the Act.[73] The Commission notes that this approach is also consistent with the NYSE's processes for nomination and election of directors on the NYSE board.[74]

C. NYSE Alternext US Rules

1. Floor Officials, Senior Floor Officials, Exchange Officials and Senior Supervisory Officer

The Floor Officials, Senior Floor Officials, and Exchange Officials in place at Amex immediately prior to the Mergers [75] will continue in such capacity for the period prior to the planned relocation of the NYSE Alternext US equities and options trading facilities to the NYSE trading floor or the electronic trading platform of the NYSE or NYSE Arca, as applicable.[76] Currently, Rule 21 provides that each governor of Amex that spends a substantial part of his time on the floor of Amex shall serve as a Senior Floor Official, and that additional Senior Floor Officials may be appointed [77] from among the Exchange Officials that spend a substantial part of their time on the floor.[78] In addition, the Vice Chairman of the Board currently serves as the Senior Supervisory Officer on the floor of Amex (if the Vice Chairman does not spend a substantial part of his time on the floor, one of the governors serving as a Senior Floor Official shall be designated as the Senior Supervisory Officer by the Chairman of the Board, subject to the approval of the Board). Rule 21 also provides that Exchange Officials that spend a substantial part of their time on the floor shall be appointed as Floor Officials; further, such other persons that are familiar with the floor may be appointed as Floor Officials.[79]

Amex proposes to amend Rule 21 to reflect the fact that the NYSE Alternext US Board will not have a category of directors who are required to spend a substantial portion of their time on the trading floor. Any director that spends a substantial part of his time on the floor shall still serve as a Senior Floor Official, and one of these directors will be appointed as the Senior Supervisory Officer (rather than the Vice-Chairman of Amex). However, if there is no director that spends a substantial part of his time on the floor, one of the Senior Floor Officials will be appointed as the Senior Supervisory Officer (thus, an Exchange Official that spends a substantial part of his time on the floor will be appointed as the Senior Supervisory Officer). Rule 21, as amended, also will allow qualified NYSE Alternext US employees who spend a substantial portion of their time on the trading floor to be appointed to serve as Floor Officials. Further, the CEO or Chief Regulatory Officer (''CRO'') (or their respective designee), rather than the Chairman of Amex, will be responsible for appointing such officials and making other appointments under the rule (subject to the other requirements of the rule).

Amex also is proposing to amend Rule 21 and other rules referencing Floor Governors to reflect the elimination of that category of member on the Amex Board. Amex proposes that Senior Floor Officials replace the Floor Governors in most cases when the reference to Floor Governor relates to the approval or review of activities on the trading floor and the chairing of certain committees (*e.g.*, the Performance and Allocation committees). In situations where a rule calls upon the Floor Governors to advise the CEO of Amex in connection with floor facilities and administration, Amex proposes that the Senior Supervisory Officer replace the Floor Governors.

[71] *See* Regulation of Exchanges and Alternative Trading Systems, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998). *See also* BATS Order, *supra* note 28, 73 FR at 49498; NYSE/Arca Order, *supra* note 25, 71 FR at 11261, n.121 and accompanying text; Securities Exchange Act Release Nos. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (''Nasdaq Exchange Registration Order'') at 3553, n.54 and accompanying text; and 44442 (June 18, 2001), 66 FR 33733, n.13 and accompanying text (June 25, 2001) (SR–PCX–01–03).

[72] 15 U.S.C. 78f(b)(3).

[73] *Id.*

[74] *See* Sec. 2.03 of the Second Amended and Restated Agreement of New York Stock Exchange LLC (''NYSE Operating Agreement''). *See also* NYSE/Arca Order, *supra* note 25, and NYSE/Euronext Order, *supra* note 18.

[75] Amex Rule 22 describes the authority and responsibilities of Floor Officials, Senior Floor Officials, and the Senior Supervisory Officer, which responsibilities are to generally promote fair and orderly operations on the floor of Amex.

[76] NYSE Alternext US intends to relocate the NYSE Alternext US cash equities and options trading facilities to the NYSE trading floor or the electronic trading platform of NYSE or NYSE Arca, as applicable. The Exchange has filed a proposed rule change to implement the relocation of the trading of cash equities to the facilities of the NYSE. *See* Securities Exchange Act Release No. 58265 (July 30, 2008), 73 FR 46075 (August 7, 2008) (SR–Amex–2008–63). NYSE Alternext US will file a separate proposed rule change with the Commission relating to the relocation of the trading of standardized options.

[77] Such appointment is made by the Chairman of the Board (or the CEO, if delegated by the Chairman), subject to the approval of the Board, and in consultation with the Senior Supervisory Officer.

[78] Exchange Officials are members of Amex, and individuals employed by or associated with a member organization in a senior capacity, that are appointed by the Chairman of Amex (or the CEO, if delegated by the Chairman), subject to the approval of the Board and after seeking the advice of members. *See* Section 3 of Article II of the Amex Constitution. This provision is proposed to be added to Rule 21, except that the CEO (or his designee), or the Chief Regulatory Officer (or his designee), will appoint the Exchange Officials, subject to the approval of the Board and after consultation with members. *See* proposed NYSE Alternext US Rule 21(d).

[79] Such appointments are made by the Chairman (or the CEO, if delegated by the Chairman), subject to the approval of the Board.

The Commission finds that these changes are consistent with the Act, including Section 6(b)(1) of the Act,[80] which requires, among other things, that a national securities exchange be organized to carry out the purposes of the Act and comply with the requirements of the Act. Amex stated that a Senior Floor Official has the same authority and responsibilities as a Floor Governor with respect to matters that arise on the Floor and require review or action by a Floor Governor or Senior Floor Official,[81] and that therefore, these changes do not expand the authority or responsibilities of Senior Floor Officials. Moreover, allowing qualified NYSE Alternext US employees to serve as Floor Officials would broaden the pool of experienced individuals who can participate in and supervise unusual trading situations on the floor. The Commission notes that recently the NYSE has filed an immediately effective rule change permitting the appointment of qualified NYSE employees to act as Floor Governors.[82]

2. 86 Trinity Permits; Access to NYSE Alternext US

Following the Mergers, all trading rights appurtenant to either Regular Memberships or Options Principal Members existing immediately prior to the Mergers will be cancelled.[83] Physical and electronic access to NYSE Alternext US's trading facilities will be made available to individuals and organizations that obtain an 86 Trinity Permit.[84] 86 Trinity Permits will be made available by NYSE Alternext US to persons and entities that apply and meet certain specified requirements.[85] 86 Trinity Permits will allow the holders to trade products currently traded on Amex, including cash equities and options.[86]

To ensure continuity of trading following the Mergers, persons and entities who were authorized to trade on Amex prior to the Mergers, including (i) owners, lessees or nominees of Regular Memberships or OPMs, (ii) limited trading permit holders, and (iii) associate members, will be deemed to have satisfied applicable requirements necessary to receive an 86 Trinity Permit. 86 Trinity Permits will authorize owners, lessees or nominees of Regular Memberships or OPMs, limited trading permit holders and associate members who were authorized to trade on Amex prior to the Mergers, to trade the products which they were previously authorized to trade and, subject to meeting the qualifications currently in place for trading products which they previously were not authorized to trade, to trade such other products.

Because 86 Trinity Permits will be made available to all persons authorized to trade on Amex prior to the Mergers (such persons will be deemed to have satisfied the applicable requirements), as well as to other persons that meet such requirements, and because such requirements will be the same as the current requirements for membership in the Amex rules, the Commission finds that proposed procedures for NYSE Alternext US making available 86 Trinity Permits will provide fair access to NYSE Alternext US and are consistent with the Act and in particular with Sections 6(b)(2) and 6(b)(5) of the Act.[87]

3. Disciplinary Proceedings

Amex is proposing to replace current Rule 345, the Rules of Procedures in Disciplinary Matters, and the disciplinary provisions in the Amex Constitution with proposed NYSE Alternext US Rules 475, 476 and 477.[88] These new rules are substantially identical to the disciplinary rules of the NYSE with certain changes necessary to apply such rules to NYSE Alternext US and to reflect the application of the current American Stock Exchange Sanctions Guidelines.

Under proposed NYSE Alternext US Rules 476 and 477, initial disciplinary hearings will be held before a Hearing Panel that will be composed of at least three persons: A Hearing Officer,[89] and at least two members of the Hearing Board, at least one of whom shall be engaged in securities activities differing from that of the respondent or, if retired, was so engaged in differing activities at the time of retirement. In any disciplinary proceeding involving activities on the floor, no more than one of the persons serving on the Hearing Panel shall be or, if retired, shall have been, active on the floor. A Hearing Panel can include only one retired person.[90]

Any review of a disciplinary decision shall be conducted by the NYSE Alternext US Board or the NYSE Regulation Committee, in the sole discretion of the NYSE Alternext US Board. Upon review, and with the advice of the NYSE Regulation Committee, the NYSE Alternext US Board, by the affirmative vote of a majority of the NYSE Alternext US

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[80] 15 U.S.C. 78f(b)(1).

[81] *See* current Amex Rule 21(a).

[82] *See* Securities Exchange Act Release No. 57627 (April 4, 2008), 73 FR 19919 (April 11, 2008) (SR-NYSE–2008–19). Under the NYSE rules, Floor Governors are more senior than Floor Officials, and are authorized to take any action that a Floor Official can take. *See id.* and NYSE Rule 46.

[83] *See* Amex Notice, *supra* note 3, 73 FR at 46088 and 46094. In addition, the lessees will cease to have any trading rights under any applicable leases. *Id.*

[84] NYSE Alternext US anticipates replacing 86 Trinity Permits with equity trading licenses and options trading permits at a later date following a proposed rule change filed with the Commission. *See* Amex Notice, *supra* note 3, 73 FR at 46088, and proposed NYSE Alternext US Rules 350 and 353.

[85] The requirements for 86 Trinity Permits will be the same as the current requirements for memberships in the Amex Rules and such requirements may be satisfied by persons or entities that were not previously authorized to trade on Amex immediately prior to the Mergers.*See* Amex Notice, *supra* note 3, 73 FR 46088, and proposed NYSE Alternext US Rule 353.

[86] *Id.* At a later time, NYSE Alternext US anticipates replacing 86 Trinity Permits with equity trading licenses and options trading permits. *See* Amex Notice, *supra* note 3, 73 FR 46088. NYSE Alternext US intends to relocate the NYSE Alternext US equities and options trading facilities to the NYSE trading floor or the electronic trading platform of NYSE or NYSE Arca, as applicable. *Id.* Amex has filed a proposed rule change to implement the relocation of the trading of equities to the facilities of the NYSE. *See* Securities Exchange Act Release No. 58265 (July 30, 2008), 73 FR 46075 (August 7, 2008) (SR–Amex–2008–63). NYSE Alternext US will file a separate proposed rule change with the Commission relating to the relocation of the trading of standardized options. *See* Amex Notice, *supra* note 3, 73 FR at 46088.

[87] 15 U.S.C. 78f(b)(2) and 15 U.S.C. 78f(b)(5).

[88] Amex Rule 345, the Rules of Procedure in Disciplinary Matters and the disciplinary rules in the current Amex Constitution (''Legacy Disciplinary Procedural Rules'') will continue to apply to pending disciplinary cases which have been formally commenced at or prior to the time of the consummation of the Mergers and Related Transactions. *See* Securities Exchange Act Release No. 58286 (August 1, 2008), 73 FR 46097 (August 7, 2008) (notice of SR–Amex–2008–64), which proposed rule change the Commission is approving today. *See* Securities Exchange Release No. 58678.

[89] The Chairman of NYSE Alternext US, subject to the approval of the NYSE Alternext US Board, shall designate a Chief Hearing Officer and one or more other Hearing Officers who shall have no duties or functions relating to the investigation or preparation of disciplinary matters and who shall be appointed annually and shall serve as Hearing Officers at the pleasure of the NYSE Alternext US Board. An individual cannot be a Hearing Officer (including the Chief Hearing Officer) if he or she is, or within the last three years was, a member, allied member, or registered or non-registered employee of a member or member organization. *See* Amex Notice, *supra* note 3, and proposed NYSE Alternext US Rule 475(b).

[90] The members of the Hearing Board will be appointed by the Chairman of NYSE Alternext US subject to the approval of the NYSE Alternext US Board. The Hearing Board will be composed of such number of members and allied members of NYSE Alternext US who are not members of the NYSE Alternext US Board, and registered employees and non-registered employees of members and member organizations, and such other persons as set forth in the rules as the Chairman shall deem necessary. Former members, allied members, or registered and non-registered employees of members and member organizations who have retired from the securities industry can be appointed to the Hearing Board within five years of their retirement. The members of the Hearing Board shall be appointed annually and shall serve at the pleasure of the NYSE Alternext US Board. *Id.*

Board then in office, may sustain any determination or penalty imposed, or both, may modify or reverse any such determination, and may increase, decrease, or eliminate any such penalty, or impose any penalty permitted under the provisions of proposed NYSE Alternext US Rule 476. Unless the NYSE Alternext US Board otherwise specifically directs, the determination and penalty, if any, of the NYSE Alternext US Board after review shall be final and conclusive subject to the provisions for review of the Act.

The NYSE Regulation Committee referenced in the proposed NYSE Alternext US rules is the NYSE Regulation Committee for Review. The NYSE Regulation Bylaws currently provide for the creation of a Committee for Review that is charged with performing certain functions with respect to the NYSE, including hearing appeals for disciplinary decisions.[91] Following the Mergers and Related Transactions, the Committee for Review will also hear disciplinary appeals for NYSE Alternext US.[92] In connection therewith, the NYSE Regulation Bylaws are being amended to provide that the Committee for Review will be expanded to include at least four individuals who are associated with member organizations of NYSE Alternext US. These new members of the Committee for Review must include at least one of each of the following:

- An individual associated with a member organization of NYSE Alternext US that engages in a business involving substantial direct contact with securities customers;
- An individual associated with a member organization of NYSE Alternext US that is registered as a specialist and spends a substantial part of his or her time on the trading floor of NYSE Alternext US;
- An individual associated with a member organization of NYSE Alternext US not registered as a specialist that spends a majority of his or her time on the trading floor of NYSE Alternext US and has as a substantial part of his business the execution of transactions on the trading floor of NYSE Alternext US for other than his or her own account or the account of his NYSE Alternext US member organization; and
- An individual associated with a NYSE Alternext US Member Organization not registered as a specialist that spends a majority of his or her time on the trading floor of NYSE Alternext US and has as a substantial part of his or her business the execution of transactions on the trading floor of NYSE Alternext US for his own account or the account of his or her NYSE Alternext US Member Organization.

The Commission finds that the changes proposed to the disciplinary procedures are consistent with the Act, in particular Sections 6(b)(6) and 6(b)(7) of the Act.[93] The Commission believes that NYSE Alternext US rules will provide due process for members and member organizations involved in any disciplinary proceeding, including notice of alleged wrongdoing, an opportunity for a hearing, and avenues for appeal to the NYSE Alternext Board in appropriate circumstances. The Commission therefore believes that the proposed rules will provide fair procedures for the disciplining of members and persons associated with members, and will provide NYSE Alternext US with the ability to comply, and with the authority to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of NYSE Alternext US.[94] The Commission also finds that NYSE Alternext US's disciplinary rules are consistent with the fair representation requirements of Section 6(b)(3) of the Act[95] because NYSE Alternext US members will be represented on the disciplinary panels and the Committee for Review.

D. Affiliations Between NYSE Alternext US and Its Members

1. Limitations on Affiliation

Amex proposes to adopt proposed NYSE Alternext US General and Floor Rule 1(a), which provides that, without prior Commission approval, NYSE Alternext US or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. In addition, a member organization shall not be or become an affiliate of NYSE Alternext US, or an affiliate of any affiliate of NYSE Alternext US.[96] This rule is substantially similar to current NYSE Rule 2B, which was initially approved by the Commission in connection with the reorganization of the NYSE to be a wholly-owned subsidiary of NYSE Group.[97]

The Commission is concerned about potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interests that could exist if an exchange were to otherwise become affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.[98] The Commission believes that proposed NYSE Alternext US General and Floor Rule 1(a) is designed to mitigate these concerns and is consistent with the Act, particularly with Section 6(b)(1),[99] which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act.

2. Exception to Limitation on Affiliation Between NYSE Alternext US and Its Members

NYSE Euronext currently owns a broker-dealer, Arca Securities that is also a member organization of Amex. After the closing of the Mergers and Related Transactions, NYSE Euronext's ownership of NYSE Alternext US and Arca Securities would cause Arca Securities to be an affiliate of NYSE Alternext US, and, absent prior Commission approval, would violate the provisions in proposed NYSE Alternext US General and Floor Rule 1(a) that prohibit: (i) NYSE Alternext US or any

[91] The Committee for Review is currently composed of (i) directors of NYSE Regulation and (ii) at least three non-director committee members associated with member organizations of the NYSE, at least one of whom is associated with a member organization of the NYSE that engages in a business involving substantial direct contact with securities customers, at least one of whom is associated with a member organization of the NYSE and registered as a specialist and spends a substantial part of his or her time on the trading floor of NYSE Market and at least one of whom is associated with a member organization of the NYSE and spends a majority of his time on the trading floor of NYSE Market and has as a substantial part of his business the execution of transactions on the trading floor of NYSE Market for other than his own account or the account of his member organization, but is not registered as a specialist.

[92] Reviews of delisting determinations will be heard by the same NYSE Alternext US committee as has been reviewing such matters prior to the Mergers. *See* NYSE Notice, *supra* note 7.

[93] 15 U.S.C. 78f(b)(6) and 15 U.S.C. 78f(b)(7).

[94] *See* Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

[95] 15 U.S.C. 78f(b)(3).

[96] Proposed NYSE Alternext US General and Floor Rule 1(a) also provides that it does not prohibit a member organization from acquiring or holding an equity interest in NYSE Euronext that is permitted by the ownership limitations contained in the NYSE Euronext Charter.

[97] *See* NYSE/Arca Order, *supra* note 25. NYSE Rule 2B was later amended to reflect that NYSE Group became a wholly-owned subsidiary of NYSE Euronext. *See also* NYSE/Euronext Order, *supra* note 18, and Amendment No. 4 to the Amex Notice, *supra* note 4.

[98] *See, e.g.*, Securities Exchange Act Release No. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members) (''Nasdaq/Member Affiliation Rule'') and NYSE/Arca Order, *supra* note 25.

[99] 15 U.S.C. 78f(b)(1).

entity with which it is affiliated from maintaining an ownership interest in a member organization; and (ii) a NYSE Alternext US member organization from being affiliated with NYSE Alternext US.

Arca Securities operates as a facility of each of NYSE and NYSE Arca that provides outbound routing from each exchange to other market centers, including Amex, subject to certain conditions.[100] Consequently, the operation of Arca Securities in this capacity is subject, respectively, to NYSE and NYSE Arca oversight, as well as Commission oversight. NYSE and NYSE Arca are each responsible for ensuring that Arca Securities is operated consistent with Section 6 of the Act and their respective rules. In addition, NYSE and NYSE Arca, respectively, must file with the Commission rule changes and fees relating to Arca Securities. Use of Arca Securities outbound routing function is available to NYSE and NYSE Arca members, respectively. Use of Arca Securities' routing function by such members is optional. Arca Securities is a member of an SRO unaffiliated with NYSE or NYSE Arca, respectively, which serves as its primary regulator.[101]

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders,[102] Amex requests that the Commission approve NYSE Alternext US's affiliation with Arca Securities following the Mergers and Related Transactions, subject to the following conditions and limitations:

- First, Amex states that NYSE, FINRA, and NYSE Alternext US will enter into an agreement pursuant to Rule 17d–2 under the Act.[103] If approved, pursuant to this agreement, FINRA will be allocated regulatory responsibilities to review Arca Securities' compliance with certain NYSE Alternext US Rules.[104] Alternatively, if this agreement has not become effective as of the time of the Mergers and Related Transactions, FINRA will nevertheless review Arca Securities' compliance with certain NYSE Alternext US Rules pursuant to the New Multi-Party FINRA Regulatory Services Agreement.[105] NYSE Alternext US, however, would retain ultimate responsibility for enforcing its rules with respect to Arca Securities.
- Second, NYSE Regulation will monitor Arca Securities for compliance with NYSE Alternext US's trading rules, and will collect and maintain certain related information.[106]
- Third, Amex states that NYSE Regulation has agreed with Amex that it will provide a report to NYSE Alternext US's CRO, on a quarterly basis, that: (i) Quantifies all alerts (of which NYSE Regulation is aware) that identify Arca Securities as a participant that has potentially violated NYSE Alternext US or Commission rules, and (ii) quantifies the number of all investigations that identify Arca Securities as a participant that has potentially violated NYSE Alternext US or Commission rules.[107]
- Fourth, Amex proposes a rule that will require NYSE Euronext, as the holding company owning both NYSE Alternext US and Arca Securities, to establish and maintain procedures and internal controls reasonably designed to ensure that Arca Securities does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the NYSE Alternext US systems as a result of its affiliation with NYSE Alternext US, until such information is available generally to similarly situated members of NYSE Alternext US in connection with the provision of inbound order routing to NYSE Alternext US.[108]
- Fifth, Amex proposes that routing from Arca Securities to NYSE Alternext US, in Arca Securities' capacity as a facility of NYSE and NYSE Arca, be authorized for a pilot period of twelve months.[109]

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.[110] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NYSE Euronext, which will be an affiliate of NYSE Alternext US upon the closing of the Mergers, to continue to own Arca Securities, subject to the conditions proposed by Amex. As described above, the Commission also believes that it is consistent with the Act for Arca Securities to become an affiliate of NYSE Alternext US following the closing of the Mergers and Related Transactions, for the limited purpose of providing routing to NYSE Alternext US from the NYSE and NYSE Arca, subject to the conditions described above.[111]

Amex has proposed five conditions applicable to Arca Securities routing activities, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of Arca Securities,[112] combined with NYSE Regulation's monitoring of Arca Securities' compliance with NYSE Alternext US's trading rules and quarterly reporting to NYSE Alternext US's CRO, will help to protect the independence of NYSE Alternext US's regulatory responsibilities with respect to Arca Securities. The Commission also believes that proposed NYSE Alternext US General and Floor Rule 1(b)[113] is designed to ensure that Arca Securities cannot use any information advantage it may have because of its affiliation with NYSE Alternext US. Furthermore, the Commission believes that Amex's proposal to use Arca Securities for inbound routing from NYSE and NYSE Arca, on a pilot basis, will provide NYSE Alternext US and the Commission an opportunity to assess the impact of any conflicts of interest from allowing an affiliated member of NYSE Alternext US to route orders

[100] *See* Amex Notice, *supra* note 3, at notes 53–58 and accompanying text, and Amendment No. 4 to the Amex Notice, *supra* note 4.

[101] *Id.*

[102] *See* Amex Notice, supra note 3, at notes 59 and 61 and accompanying text, and Amendment No. 4 to the Amex Notice, *supra* note 4.

[103] The Commission notes that this 17d–2 agreement is subject to public notice and comment and prior Commission approval before it can become effective.

[104] Amex also states that Arca Securities is subject to independent oversight by FINRA, its Designated Examining Authority, for compliance with financial responsibility requirements.

[105] *See infra* text accompanying note 117.

[106] Specifically, NYSE Regulation ''will collect and maintain the following information of which NYSE Regulation staff becomes aware—namely, all alerts, complaints, investigations and enforcement actions where Arca Securities (in its capacity as a facility of NYSE Arca or the NYSE, routing orders to NYSE Alternext US) is identified as a participant that has potentially violated NYSE Alternext US or applicable Commission rules—in an easily accessible manner so as to facilitate any review conducted by the Commission's Office of Compliance Inspections and Examination.'' *See* Amex Notice, *supra* note 3, at 46094.

[107] *See* Amendment No. 4 to the Amex Notice, *supra* note 4.

[108] *See* proposed NYSE Alternext US General and Floor Rule 1(b).

[109] *See* Amex Notice, *supra* note 3.

[110] *See, e.g.*, Nasdaq/Member Affiliation Rule, *supra* note 98 and NYSE/Arca Order, *supra* note 25.

[111] *See supra* notes 100 to 109 and accompanying text.

[112] This oversight will accomplished either through the 17d–2 agreement among NYSE, FINRA and NYSE Alternext, *see supra* note 103, or through New Multi-Party FINRA RSA, *see infra* text accompanying note 117.

[113] *See supra* note 108 and accompanying text.

inbound to NYSE Alternext US and whether such affiliation provides an unfair competitive advantage.[114]

E. Regulation of NYSE Alternext US

Under the Act, an exchange must be organized and have the capacity to carry out the purposes of the Act.[115] Specifically, an exchange must be able to enforce compliance by its members and persons associated with its members with federal securities laws and the rules of the exchange.[116]

Amex has proposed several measures designed to ensure that NYSE Alternext US can meet its obligations under the Act and that its regulatory functions are independent of its market operations and other commercial interests. First, NYSE Alternext US will enter into a regulatory contract with NYSE Regulation (''NYSE Regulation RSA''), under which NYSE Alternext US will contract with NYSE Regulation to perform all of NYSE Alternext US's regulatory functions on NYSE Alternext US's behalf. However, FINRA may perform some of the regulatory functions contracted out to NYSE Regulation pursuant to a separate multi-party regulatory services agreement by and among NYSE Regulation, NYSE Group, FINRA, and NYSE Alternext US (''New Multi-Party FINRA RSA'').[117] Notwithstanding these regulatory contracts, NYSE Alternext US will retain ultimate legal responsibility for the regulation of its members and its market. NYSE Alternext US also will retain the authority to direct NYSE Regulation, FINRA, or any other SRO that provides regulatory services to take any action necessary to fulfill NYSE Alternext US's statutory and self-regulatory obligations.[118] In addition, the NYSE Alternext US Board will appoint a CRO, who will be an officer of NYSE Alternext US and will report directly to the NYSE Alternext US Board.[119]

Finally, NYSE Euronext has agreed to provide adequate funding to NYSE Regulation to conduct its regulatory activities with respect to NYSE, NYSE Arca and, from and after closing of the transaction, NYSE Alternext US.[120] In addition, NYSE Alternext US will not use any regulatory fees, fines or penalties collected by NYSE Regulation for commercial purposes.[121]

The Commission finds that Amex's proposed regulatory structure is consistent with the Act, including Section 6(b)(1) of the Act,[122] which requires, among other things, that a national securities exchange be organized to carry out the purposes of the Act and comply with the requirements of the Act. The Commission believes that it is consistent with the Act to allow NYSE Alternext US to contract with NYSE Regulation and FINRA to perform its regulatory functions, including its examination, enforcement, and disciplinary functions.[123] These functions are fundamental elements to a regulatory program, and constitute core self-regulatory functions. It is essential to the public interest and the protection of investors that these functions are carried out in an exemplary manner, and the Commission believes that NYSE Regulation and FINRA have the expertise and experience to perform these functions on behalf of NYSE Alternext US.[124]

At the same time, NYSE Alternext US, unless relieved by the Commission of its responsibility,[125] is obligated as an SRO to enforce compliance with the securities laws and its rules and has primary liability for self-regulatory failures. The Commission believes that Amex's proposal to appoint a CRO reporting to the NYSE Alternext US Board will further NYSE Alternext US's ability to satisfy these self-regulatory obligations consistent with Section 6(b)(1) of the Act.[126] NYSE Regulation and FINRA will be performing regulatory functions on NYSE Alternext US's behalf pursuant to a contract. In performing these functions, NYSE Regulation and FINRA may bear liability for causing or aiding and abetting the failure of NYSE Alternext US to satisfy its regulatory obligations.[127]

The Commission notes that upon the consummation of the Mergers and the Related Transactions, NYSE Alternext US will no longer have a Regulatory Oversight Committee (''ROC''). Instead, NYSE Alternext US will contract with NYSE Regulation to perform all of its regulatory functions. The Commission believes that it is consistent with the Act for NYSE Alternext US to eliminate its ROC and instead contract with NYSE Regulation to perform its regulatory functions because the governance of NYSE Regulation will provide a comparable level of independence that a ROC would provide. In particular, all directors on the board of NYSE Regulation (other than its CEO) are, and will be, required to be independent of management of NYSE Euronext and its subsidiaries, as well as of NYSE, NYSE Arca, and NYSE Alternext US members and listed companies. In addition, a majority of the members of the NYSE Regulation board must be directors that are not also directors of NYSE Euronext.[128]

Finally, the Commission believes that NYSE Euronext's commitment to provide adequate funding to NYSE Regulation to conduct its regulatory activities is designed to ensure that NYSE Alternext US can perform its obligations under the Act.

F. Undertakings

Amex requests to be relieved from the undertakings adopted by the Amex Board on December 4, 2004 and approved by the Commission as part of an Amex proposed rule change filed

[114] This approval is only for Arca Securities to route orders to NYSE Alternext US in its capacity as a facility of the NYSE or NYSE Arca, subject to the conditions discussed herein. *See supra* note 100 and accompanying text. This approval does not include Arca Securities providing outbound routing functions from NYSE Alternext US to other markets.

[115] *See* Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

[116] *Id.*

[117] *See* proposed NYSE Alternext US Rule 1(b) and Amendment No. 4 to the Amex Notice, *supra* note 4. In effect, FINRA will be a ''sub-contractor'' for some of the regulatory functions that would otherwise be performed by NYSE Regulation. Pursuant to the applicable provisions of the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations thereunder, 17 CFR 200.83, Amex has requested confidential treatment for the NYSE Regulation RSA and the New Multi-Party FINRA RSA.

[118] *See* proposed NYSE Alternext US Rule 1B.

[119] *See* Amex Notice, *supra* note 3.

[120] *Id.,* 73 FR at 46095.

[121] *See* Section 4.05 of the proposed NYSE Alternext US Operating Agreement.

[122] 15 U.S.C. 78f(b)(1).

[123] *See, e.g.*, Regulation of Exchanges and Alternative Trading Systems, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (''Regulation ATS Release''). *See also* Securities Exchange Act Release 50122 (July 29, 2004), 69 FR 47962 (August 6, 2004) (SR–Amex–2004–32) (order approving rule that allowed Amex to contract with another SRO for regulatory services) (''Amex Regulatory Services Approval Order''); NOM Approval Order, *supra* note 27; and Nasdaq Exchange Registration Order, *supra* note 71.

[124] *See* Amex Regulatory Services Approval Order, *supra* note 123; NOM Approval Order, *supra* note 27 and Nasdaq Exchange Registration Order, *supra* note 71. The Commission notes that the NYSE Regulation RSA and the New Multi-Party FINRA RSA are not before the Commission and, therefore, the Commission is not acting on them.

[125] *See* Section 17(d)(1) of the Act and Rule 17d–2 thereunder, 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d–2.

[126] 15 U.S.C. 78f(b)(1).

[127] For example, if failings by FINRA or NYSE Regulation have the effect of leaving NYSE Alternext US in violation of any aspect of NYSE Alternext US's self-regulatory obligations, NYSE Alternext US would bear direct liability for the violation, while FINRA or NYSE Regulation may bear liability for causing or aiding and abetting the violation. *See, e.g.*, Nasdaq Exchange Registration Order, *supra* note 71, and ISE Exchange Registration Order, *supra* note 26.

[128] *See* Article III, Section 1 of the proposed Third Amended and Restated Bylaws of NYSE Regulation.

under Section 19 of the Act (''Undertakings'').[129] Section 1 of the Undertakings, among other things, prohibits Amex from terminating its current regulatory services agreement with FINRA (''FINRA RSA'')[130] unless on or prior to the date of such termination, Amex has entered into an alternative arrangement relating to the provision of regulatory services that has been approved by the Commission. Section 2 of the Undertakings requires Amex and its CRO to use reasonable efforts to cause the staff of FINRA responsible for providing services under the FINRA RSA, to periodically confer with staff of the Division of Trading and Markets and the Office of Compliance Inspections and Examinations of the Commission regarding the status of Amex's regulatory program.[131] Finally, Section 3 of the Undertakings mandates Amex to provide to the Director of the Division of Trading and Markets certain financial statements certified by Amex's chief financial officer and reviewed by Amex's independent accountants, together with evidence of such review at specified intervals. Section 3 of the Undertaking also requires the provision of other financial information, including schedules reflecting the available borrowings under each of Amex's credit facilities and computations of compliance with all financial covenants contained therein, projected cash and working capital trends, and material off-balance sheet liabilities.[132]

The Commission believes it is consistent with the Act for Amex to be relieved from its Undertakings. With respect to Sections 1 and 2 of the Undertakings, the Commission believes that NYSE Alternext US arrangements for contracting out regulatory services through the NYSE Regulation RSA and the New Multi-Party FINRA RSA[133] is comparable to the FINRA RSA and is designed to ensure that NYSE Alternext US regulatory program is conducted in a manner that is consistent with the Act. Further, the Commission finds that it is no longer necessary at this time for Amex to provide certain financial information on a regular basis to the Director of the Division of Trading and Markets.

G. NYSE Euronext Independence Policy

In its proposed rule change, the NYSE proposes to amend the definitions of ''member'' and ''member organization'' in the NYSE Euronext Independence Policy to refer to relevant sections of the Act[134] instead of the different rules of the NYSE, NYSE Arca, and NYSE Alternext US. The NYSE also proposes to reduce the ''look-back'' period with respect to directors' relationships with members of the NYSE and NYSE Arca (which following the Mergers will apply equally to NYSE Alternext US) from three years to one year. In addition, the NYSE is proposing to delete a restriction stating that a director is not independent if such director is employed by or affiliated with a non-member broker-dealer, thus allowing independent directors of NYSE, NYSE Arca, and NYSE Alternext US to be employed by or affiliated with non-member broker dealers.[135]

The Commission finds that these changes are consistent with the Act. The proposed changes to the definition of ''member'' and ''member organization'' will harmonize the use of those terms across all three SROs owned by NYSE Euronext for purposes of determining the independence of NYSE Euronext directors (and the directors of its subsidiary SROs). The Commission believes that a one year ''look-back'' period, together with the other criteria for determining the independence of NYSE Euronext directors will continue to provide for director independence consistent with the Act.[136] Further, the Commission believes that allowing directors to be affiliated with non-member broker-dealers is consistent with the Act because NYSE Alternext US will not have regulatory oversight over such broker-dealers and thus the member conflicts that the independence requirements are designed to address are not raised.[137]

IV. Accelerated Approval of SR–Amex–2008–62

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[138] for approving the proposal, as modified by Amendment Nos. 1 and 4, prior to the thirtieth day after the date of publication of notice of filing of Amendment No. 4 in the **Federal Register**.[139]

In Amendment No. 4, Amex proposes to reflect those changes to the Amex Rules that had occurred since the filing of the proposed rule change that are necessary to accurately describe the current Amex Rules and show the proposed changes, as applicable. Amex also proposes to make certain clarifying, technical and non-substantive changes to the text of the proposed rule change. Amendment No. 4 also includes a revised description of the parties to the New Multi-Party FINRA RSA, and a revised description of the merger between the current parent companies of Amex.[140] In addition, in Amendment No. 4, Amex modifies its description of Arca Securities to state, among other things, that with respect to its oversight of Arca Securities after the Mergers and Related Transactions, NYSE Regulation has agreed to provide NYSE Alternext US's CRO quarterly reports related to oversight of Arca Securities, which operates as a facility of each of NYSE and NYSE Arca that will provide outbound routing from each exchange to NYSE Alternext US, subject to certain conditions.[141] As stated above,[142] the Commission believes that such reports, along with other measures, will help to protect the independence of NYSE Alternext US's regulatory responsibilities with respect to Arca Securities from conflicts of interest that may arise as a result of NYSE Alternext US's affiliation with Arca Securities. The Commission does not believe that these changes have any substantive impact on the proposed changes.

Accordingly, the Commission finds good cause for approving the Amex's proposal, as modified by Amendment Nos. 1 and 4, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

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[129] *See* Amex Order, *supra* note 14.

[130] Amex is currently a party to a regulatory services agreement with FINRA under which FINRA performs market and trade practice surveillance and analysis, financial and operational regulation, options sales practice regulation, enforcement investigations and disciplinary processes and dispute resolution services for Amex.

[131] For more detail on Sections 1 and 2 of the Undertakings, *see* Amex Order, *supra* note 14.

[132] For more detail on Section 3 of the Undertakings, *see* Amex Order, *supra* note 14.

[133] *See supra* note 117 and accompanying text, and Amendment No. 4 to the Amex Notice, *supra* note 4.

[134] Member is defined as set forth in Sections 3(a)(3)(A)(i), 3(a)(3)(A)(ii), 3(a)(3)(A)(iii) and 3(a)(3)(A)(iv) of the Act, 15 U.S.C. 78c(a)(3)(A).

[135] NYSE Euronext also proposes some technical changes to the independence policy: (i) The deletion of a provision relating to a transition period for non-US board directors of NYSE Euronext because it is obsolete; and (ii) all references to NYSE, NYSE Arca, and NYSE Alternext US shall mean each of those entities or its successor.

[136] *See* Independence Policy of the NYSE Euronext Board of Directors, Exhibit 5B to the NYSE Notice, supra note 7.

[137] *See e.g.*, Article II, Sections 2(b) and 3(a) of the bylaws and Paragraph 505 of the certificate of incorporation of the Chicago Stock Exchange, Inc; Sections 1.1 of the bylaws of the National Stock Exchange, Inc.

[138] 15 U.S.C. 78s(b)(2).

[139] Pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

[140] As noted *supra* in note 4, this change will not affect the final outcome of the Mergers through which NYSE Alternext US will become a subsidiary of NYSE Euronext.

[141] *See supra*, notes 100 to 109 and accompanying text.

[142] *Id.*

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4 to File No. SR–Amex–2008–62, including whether Amendment No. 4 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–Amex–2008–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, and 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2008–62. 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 Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2008–62 and should be submitted on or before October 24, 2008.

VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[143] that the proposed rule change (SR–Amex–2008–62), as modified by Amendment Nos. 1 and 4 thereto, be and hereby is approved on an accelerated basis.

It is therefore further ordered, pursuant to Section 19(b)(2) of the Act,[144] that the proposed rule change (SR–NYSE–2008–60), as modified by Amendment No. 1 thereto, be and hereby is approved.

Although the Commission's approval of the proposed rule changes of Amex (SR–Amex–2008–62) and NYSE (SR–NYSE–2008–60) is final and the proposed rules are therefore effective, *it is further ordered* that the proposed rule changes will not become operative until the NYSE Regulation RSA and the New Multi-Party FINRA RSA are executed.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23313 Filed 10–2–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58676; File No. SR–ISE–2008–69]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, LLC Relating to Amending the Fee Schedule

September 29, 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 September 22, 2008, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. 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 with respect to transactions executed in securities reported to Tape B. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 1, 2008, the Exchange adopted a fee structure for transactions in securities priced at or above $1.00 that are reported to Tape B (hereinafter, referred to as Tape B securities) (excluding both order delivery and MidPoint Match orders) whereby the maker receives a per share rebate of $0.0017 and the taker fee is $0.0015 on all Tape B shares.[3] For transactions in securities priced at or above $1.00 that are reported to Tape A and Tape C (hereinafter referred to as Tape A and Tape C securities), the Exchange applies a tiered rebate structure, averaged across an entire month, whereby the first five million maker shares executed on an average daily volume (ADV) basis receive a rebate of $0.0032 per share, with an increase in the rebate to $0.0035 for each maker share executed above five million ADV.

For order delivery orders in securities priced at or above $1.00, the Exchange provides a rebate of $0.0015 for maker shares executed in Tape B securities and a rebate of $0.0027 for maker shares executed in Tape A and Tape C securities. The Exchange is proposing to amend the equity fee schedule to apply equity fees consistently across all

[143] 15 U.S.C. 78s(b)(2).

[144] 15 U.S.C. 78s(b)(2).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities and Exchange Commission Release No. 58147 (July 11, 2008); 73 FR 41389 (July 18, 2008) (SR–ISE–2008–53) [sic].

securities, regardless of which Tape they are reported to. The Exchange is proposing to implement these fee changes on October 1, 2008. Specifically, the Exchange proposes to implement a tiered rebate structure for securities priced at or above $1.00 across all Tapes, averaged across an entire month, where the first five million maker shares executed on an average daily volume (ADV) basis receive a rebate of $0.0032 per share, with an increase in the rebate to $0.0035 for each maker share executed above five million ADV. Additionally, the Exchange proposes to reinstate a single taker fee for securities priced at or above $1.00 of $0.0030 for executions on all securities, regardless of which Tape they are reported to.

For shares executed on an order delivery basis in securities priced at or above $1.00, the Exchange proposes to rebate $0.0027 for all maker shares executed, regardless of which Tape they are reported to.

The execution fee for equities priced under $1.00, regardless of which tape they are reported to, is 0.3% of trade value with no rebates for adding liquidity.

For the avoidance of doubt, the Exchange proposes to add a note to the fee schedule stating that fees are based on ADV per member, per month.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] 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.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[6] and Rule 19b–4(f)(2)[7] 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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2008–69 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2008–69. 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-ISE–2008–69 and should be submitted on or before October 24, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23364 Filed 10–2–08; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58645; File No. SR–ISE–2008–72]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Foreign Currency Options Closing Settlement Value

September 25, 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 September 23, 2008, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its rules regarding Foreign Currency Options (''FX Options'').[3] The text of the proposed rule amendment is as follows, with deletions in [brackets] and additions in *italics*:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ISE began trading FX options on April 17, 2007 pursuant to Commission approval. See Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007).

Rule 2212. Foreign Currency Options Closing Settlement Value

(a) The closing settlement value shall be the day's announced Noon Buying Rate, as determined by the Federal Reserve Bank of New York, on the last trading day during expiration week. If the Noon Buying Rate is not announced by [2] *5:00* p.m. Eastern time, the closing settlement value will be the most recently announced Noon Buying Rate, unless the Exchange determines to apply an alternative closing settlement value as a result of extraordinary circumstances. In the event the Noon Buying Rate is not published for an underlying currency, the Exchange will apply the WM/Reuters Closing Spot rate to determine the closing settlement value. If the Federal Reserve Bank of New York determines to publish a Noon Buying Rate in the future for a currency for which it currently does not publish such rate, the Exchange will apply the Noon Buying Rate in place of the WM/Reuters Composite Spot rate to determine the closing settlement value for such currency.

(b)–(c) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

(a) *Purpose*—ISE proposes to amend its rules regarding FX Options. Specifically, the Exchange proposes to amend its FX Options closing settlement value rule by changing the reference time from 2 p.m. Eastern time to 5 p.m. Eastern time. ISE's current rule for determining closing settlement value for FX Options states that the closing settlement value shall be the day's announced ''Noon Buying Rate,'' as determined by the Federal Reserve Bank of New York, on the last trading day during expiration week. ISE Rule 2212(a) further states that if the Noon Buying Rate is not announced by 2 p.m. Eastern time, the closing settlement value will be the most recently announced Noon Buying Rate.[4] The Exchange now proposes to amend its FX options closing settlement value rule by changing the reference time from 2 p.m. to 5 p.m. While the Noon Buying Rate is still established by the Federal Reserve Bank of New York, the Noon Buying Rate will soon be disseminated and displayed at a later time, albeit on the same day. This proposed rule change will allow the Exchange to continue to rely on this industry-recognized value and do so without causing any disruption in the calculation of the closing settlement value for FX Options.

The Exchange is not proposing to make any changes to its FX Options rules other that to change the reference time found in ISE Rule 2212(a).

(b) *Basis*—The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act's[6] requirements that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In particular, the proposed rule change will allow the Exchange to continue to rely on an industry-recognized value to determine the closing settlement value for FX Options traded on the Exchange.

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.

[4] Under ISE Rule 2212, in the event the Federal Reserve Bank of New York does not maintain or publish a Noon Buying Rate for an underlying currency, ISE will apply the WM/Reuters Closing Spot rate to determine the closing settlement value.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change as required by Rule 19b–4(f)(6).[7] For the foregoing reasons, the Exchange believes the proposed rule filing qualifies for expedited approval as a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 of the Act.[8]

The Exchange believes the proposed rule change is non-controversial in that the only change proposed herein is to the reference time used by the Exchange to determine the closing settlement value for FX Options. The Exchange also believes that the proposed rule change does not raise any new, unique or substantive issues, and is beneficial for competitive purposes and to promote a free and open market for the benefit of investors.

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

[7] 17 CFR 240.19b–4(f)(6).

[8] The Commission notes that it does not approve rule changes filed under paragraph (f)(6) of Rule 19b–4 of the Act.

Number SR–ISE–2008–72 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2008–72. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2008–72 and should be submitted on or before October 24, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23409 Filed 10–2–08; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58671; File No. SR–ISE–2008–71]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, LLC Relating to Fee Changes

September 29, 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 September 23, 2008, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. 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 by (1) raising the fee for Firm Proprietary orders, and (2) adopting a sliding scale-based fee credit for the Exchange's Electronic Access Members (''EAMs''). The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

(a) *Purpose*—The Exchange proposes to amend its Schedule of Fees by increasing the firm proprietary transaction fee charged to members, currently set at $0.18 per contract, to $0.20 per contract. In connection with the proposed increase to the firm proprietary transaction fee, the Exchange also proposes to adopt a sliding scale-based fee credit for EAMs. Specifically, the Exchange proposes to create a sliding scale-based fee credit that rewards EAMs for the total amount of order flow sent to ISE, as follows (all volume figures are aggregate volume for a member per calendar month):

• For the first 500,000 contracts traded on the Exchange during a calendar month, EAMs will not receive any credit.

• For the next 2,500,000 contracts traded, EAMs will receive a credit of $0.005 per contract.

• For the next 1,000,000 contracts traded, EAMs will receive a credit of $0.01 per contract.

• Thereafter, EAMs will receive an incremental credit of $0.005 per contract per each 1,000,000 incremental contracts traded on the Exchange during a calendar month.

The sliding scale will apply to all customer and firm proprietary orders in all products and will be calculated on a member firm basis,[3] and will apply to non-discounted volume only, that is, it will not apply to orders previously discounted by other pricing incentives that currently appear on the Exchange's Schedule of Fees. Under the proposal, credits will be capped at 100% of transaction charges. The Exchange believes the proposed fee credits will benefit order flow providers who send substantial non-market maker order flow to ISE while providing an incentive to those that do not currently send their non-market maker order flow to ISE to do so.

The proposed fee changes will be operative on October 1, 2008.

(b) *Basis*—The Exchange believes that the proposed rule change is consistent with the objectives of Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] 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. In particular, the proposed fee credit will allow the Exchange to compete more effectively with other options exchanges as it will serve as an incentive for order flow

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] If a member firm operates more than one EAM membership, the Exchange will aggregate the trading activity of firms for purposes of the sliding scale based on common ownership between firms as reflected on each firm's Form BD.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

providers to send their non-market maker flow to ISE.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b-4(f)(2) [7] 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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2008–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2008–71. 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–2008–71 and should be submitted on or before October 24, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23410 Filed 10–2–08; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b-4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58658; File No. SR–Phlx–2008–64]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Trading Halt Rule in Connection With the Dissemination of Net Asset Value and Disclosed Portfolio for Certain Derivative Securities Products

September 26, 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 18, 2008, NASDAQ OMX PHLX, Inc. (''Phlx'' 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 136 to state that the Exchange will halt trading in New Derivative Securities Products [3] listed on the Exchange for which a net asset value (and in the case of managed fund shares or actively managed exchange-traded funds, a ''disclosed portfolio'') is disseminated if the Exchange becomes aware that the net asset value and, if applicable, the disclosed portfolio is not being disseminated to all market participants at the same time. The text of the proposed rule change is available on the Exchange's Website at *http://www.phlx.com/regulatory/reg_rulefilings.aspx* , at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to address trading halts for New Derivative Securities Products listed on the Exchange for which a net asset value and/or a disclosed portfolio is disseminated. Net asset values and disclosed portfolios, when applicable, are calculated daily and disseminated to all market participants at the same time. In this proposed rule change, the Exchange is amending its rules to state that the Exchange will halt trading in New Derivative Securities Products listed on the Exchange for which a net asset value and/or a disclosed portfolio

[3] *See* Phlx Rule 136(e)(1).

is disseminated if the Exchange becomes aware that the net asset value or, if applicable, the disclosed portfolio is not being disseminated to all market participants at the same time. Also, the Exchange will maintain the trading halt until such time as the Exchange becomes aware that the net asset value and, if applicable, the disclosed portfolio is available to all market participants. In addition, the Exchange represents that in the event that the net asset value or the disclosed portfolio, as applicable, for a New Derivative Securities Product ceases to be disseminated altogether, the Exchange will halt trading in such New Derivative Securities Product.

The Exchange notes that it recently filed a proposed rule change in which it adopted a rule, Phlx Rule 136(d)(4), stating that the Exchange would halt trading in New Derivative Securities Products trading on the Exchange pursuant to unlisted trading privileges, if the listing market notifies the Exchange that the net asset value and, if applicable, the disclosed portfolio is not being disseminated to all market participants at the same time.[4] Also the Exchange is now proposing to clarify the rule text in Phlx Rule 136(d)(4) by changing the word ''and'' to ''or'' in the second half of the first sentence of that paragraph to make clear that the Exchange would halt trading upon notification by the listing market of the New Derivative Securities Product that either the net asset value or the disclosed portfolio is not being disseminated to all market participants at the same time. Consistent with the earlier proposed rule change, the Exchange now proposes to adopt a rule, Phlx Rule 136(c)(1)(B), stating that the Exchange will halt trading in New Derivative Securities Products listed on the Exchange for which a net asset value and/or a disclosed portfolio is disseminated if the Exchange becomes aware that the net asset value or, if applicable, the disclosed portfolio is not being disseminated to all market participants at the same time. As a consequence of the additional language proposed in Phlx Rule 136(c), the Exchange is renumbering the existing material to provide more clarity to the section.

2.Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a National Market System, and, in general to protect investors and the public interest. The Exchange believes the proposed rule change is reasonably designed to prevent trading in certain New Derivative Securities Products when the availability of certain information is impaired. Specifically, the proposed rule change is intended to protect investors and the public interest when key information relating to the net asset value or the disclosed portfolio becomes unavailable or available only to some market participants, but not all participants, at the time of dissemination.

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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or 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[7] and Rule 19b–4(f)(6) thereunder.[8] A proposed rule change filed under 19b–4(f)(6) normally does not become operative until 30 days after the date of filing.[9] However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Phlx requests that the Commission waive the 30-day operative delay and make the proposed rule change operative upon filing because this proposal raises no novel issues and is virtually identical to the rule proposals of the American Stock Exchange LLC (''Amex''), the NASDAQ Stock Market LLC (''NASDAQ''), the New York Stock Exchange LLC (''NYSE'') and NYSE Arca, Inc. (''NYSE Arca''), which were recently approved by the Commission.[11] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore grants the Exchange's request and designates the proposal to be operative upon filing.[12]

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–Phlx–2008–64 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2008–64. 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

[4] *See* Securities Exchange Act Release No. 57806 (May 9, 2008), 73 FR 28541 (May 16, 2008) (SR–Phlx–2008–34).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] *Id.* 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 Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *See* Securities Exchange Act Release No. 58111 (July 7, 2008), 73 FR 40643 (July 15, 2008) (SR–Amex–2008–40, SR–NASDAQ–2008–046, SR–NYSE–2008–39, SR–NYSEArca–2008–50).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2008–64 and should be submitted on or before October 24, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23362 Filed 10–2–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58666; File No. SR–NASDAQ–2008–018]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto To Remove From Rule 7019 the Fees for Receiving Index Values

September 26, 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 March 12, 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 by Nasdaq. On September 5, 2008, Nasdaq filed Amendment No. 1 to the proposed rule change. On September 25, 2008, Nasdaq filed Amendment No. 2 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to remove from the Nasdaq Rule 7019 fees for receiving index values. Nasdaq's rule book contains rules pertaining to ''facilities'' of the exchange, and indexes are not such ''facilities'' within the meaning of the Act.

The text of the proposed rule change to Rule 7019 is below. Proposed deletions are in brackets.

* * * * *

7019. Market Data Distributor Fees

(a) No change.

(b) The charge to be paid by Distributors of the following Nasdaq Market Center real time data feeds shall be:

	Monthly direct access fee	Monthly internal distributor fee	Monthly external distributor fee
Issue Specific Data:			
Dynamic Intraday	.....	.....	.....
TotalView	$2,000	$1,000	$2,500
OpenView	$1,000	$500	$1,250
[Market Summary Statistics]:			
[Intraday]	[$500]	[$50]	[$1,500]
[Real Time Index]			

(c) and (d) No change.

* * * * *

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

Nasdaq designs and licenses to financial product issuers and sponsors and to other interested parties a number of Nasdaq-proprietary securities indexes. Nasdaq also calculates the values of Nasdaq and, on occasion, non-Nasdaq indexes and disseminates such values to subscribers. The Nasdaq indexes include broad market indexes, such as the Nasdaq-100 and the Nasdaq Composite, sectoral indexes, such as Nasdaq Biotechnology, Nasdaq Insurance or Nasdaq Transportation, international indexes, such as Nasdaq Israel and Nasdaq China, and custom co-branded indexes, such as Nasdaq Clean Edge. Some of these indexes include only those components that are listed on Nasdaq, while others may also include components listed on other exchanges.

All market participants, both members and non-members of Nasdaq, are currently able to subscribe to Nasdaq's index dissemination service. Subscribers currently also receive intra-day asset values as well as certain once-a-day information for exchange traded funds (''ETFs'').[3] The intra-day asset values for ETFs that Nasdaq disseminates can be calculated by Nasdaq itself (subject to negotiating an appropriate agreement on commercial

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq is submitting to the Commission in connection with this filing the list of indexes and ETFs that are currently (as of the date of this filing) included in the Nasdaq index dissemination service. This list changes frequently, and an up-to-date list is available at: *http://www.nasdaqtrader.com/content/productsservices/dataproducts/realtimeindexes/indexsymbols.pdf.*

terms with the ETF sponsor) or by a third party.

Nasdaq believes that the business of creating and licensing indexes is highly competitive. Some of Nasdaq's prominent competitors are Dow Jones, Russell, Standard & Poor, as well as many others. It is Nasdaq's understanding that license fees that Nasdaq and its competitors charge for the actual use of their respective indexes in connection with the creation or trading of financial products linked to such indexes have never been subject to Commission oversight. However, Nasdaq's former corporate parent, then known as the National Association of Securities Dealers, Inc. (''NASD''), historically included in its rule book charges for distributing index values,[4] and this practice carried over into the Nasdaq rule book when Nasdaq was registered as a national securities exchange in 2006.[5]

Nasdaq believes that by calculating and distributing index and ETF values, it provides information regarding a non-exchange activity.[6] As such, Nasdaq believes that its index dissemination service is not a facility of a national securities exchange within the meaning of the Act and that it is not required under Section 19(b)(1) of the Act[7] and Rule 19b–4 thereunder[8] to file rules regarding the applicable charges.

If, at a later date, Nasdaq proposed to modify the manner in which it disseminates index values causing this service to fit within the definition of a facility of the exchange, or if Nasdaq proposed to tie the fees that distributors pay for receiving index values to fees for or usage of exchange services,[9] Nasdaq would file a proposed rule change with the Commission.[10]

2. Statutory Basis

Nasdaq believes that its index dissemination service is not a facility of a national securities exchange within the meaning of the Act and the terms of this service are not rules that must be filed with the Commission under Section 19(b)(1) of the Act[11] and Rule 19b–4 thereunder.[12] Therefore, removing the applicable provisions from the Nasdaq rule book would be consistent with the provisions of Section 6(b) of the Act.[13]

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2008–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–018. 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 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–2008–018 and should be submitted on or before October 24, 2008.

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[4] *See, e.g.*, Securities Exchange Act Release No. 34–45685 (Apr. 3, 2002) (approving SR–NASD–2001–86, modifying the index distribution fee, which was included in the NASD Manual).

[5] *See* Securities Exchange Act Release No. 34–53128 (Jan. 13, 2006) (approval of Nasdaq's application for registration as a national securities exchange).

[6] The information used in calculating the values of the Nasdaq indexes is made publicly available, and Nasdaq's status as a self-regulatory organization gives it no special advantage over any other entity that may wish to calculate the values of these indexes. Generally, the ''inputs'' required to make the calculation include last sale prices and total shares outstanding for the underlying securities, and the weighting of each underlying security in the index. The Nasdaq systems that calculate index values receive the price data in the same manner as other subscribers to the relevant data streams (i.e., from the relevant ''Tapes''). The total shares outstanding data are derived from the companies' SEC public filings, from the notifications that Nasdaq-listed issuers are required to submit to Nasdaq in the event of 5% or greater changes in the total shares outstanding, and on occasion from information that issuers may voluntarily communicate to Nasdaq. (In all cases, the current total shares outstanding figures are posted on a Nasdaq Web site, and any changes to the posted figures are reflected on the Web site no later than when such changes become effective for index calculations.) Component weightings are normally determined by index owners using their proprietary algorithms. In the case of Nasdaq-owned indexes, component weightings are determined daily by Nasdaq (in its capacity as the index owner). Nasdaq makes these weightings available to the public for purchase.

[7] 15 U.S.C. 78s(b)(1).

[8] 17 CFR 240.19b–4.

[9] Nasdaq does not currently tie the fees that distributors pay for receiving index values to fees for or usage of exchange services. Exchange services include, for example, listing and trading.

[10] *See* Securities Exchange Act Release No. 56237 (Aug. 9, 2007), 72 FR 46118 (Aug. 16, 2007) (approving removal from exchange rule book of provisions governing operation of the ACES system).

[11] 15 U.S.C. 78s(b)(1).

[12] 17 CFR 240.19b–4.

[13] 15 U.S.C. 78f(b).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–23363 Filed 10–2–08; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending September 19, 2008

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2008–0286.

Date Filed: September 15, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 6, 2008.

Description: Application of Vision Airlines, Inc. (''Vision'') requesting an amendment to its certificate of public convenience and necessity authorizing Vision to engage in air transportation of persons, property and mail with large aircraft.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E8–23408 Filed 10–2–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending September 19, 2008

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2008–0287.

Date Filed: September 18, 2008.

Parties: Members of the International Air Transport Association.

Subject: TC2 Within Middle East Expedited Resolution 002ca (Memo 0188); *Intended effective date:* 1 January 2009.

Docket Number: DOT–OST–2008–0288.

Date Filed: September 18, 2008.

Parties: Members of the International Air Transport Association.

Subject: TC23/123 Africa–TC3 (except South West Pacific) , Resolution 015v (Memo 0389) , Intended effective date: 15 October 2008.

Docket Number: DOT–OST–2008–0289.

Date Filed: September 18, 2008.

Parties: Members of the International Air Transport Association.

Subject: TC23/123 Africa-South East Asia Expedited, Resolution 002bw (Memo 0390), Intended effective date: 15 October 2008.

Docket Number: DOT–OST–2008–0290.

Date Filed: September 18, 2008.

Parties: Members of the International Air Transport Association.

Subject: TC23/123 Middle East-TC3 (except South West Pacific), Resolution 015v (Memo 0391), Intended effective date: 15 October 2008.

Docket Number: DOT–OST–2008–0291.

Date Filed: September 18, 2008.

Parties: Members of the International Air Transport Association.

Subject: TC23/123 Middle East-South East Asia Expedited, Resolution 002hh (Memo 0392), Intended effective date: 15 October 2008.

Renee V. Wright,

Program Manager, Docket Operation, Federal Register Liaison.

[FR Doc. E8–23407 Filed 10–2–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 688X)]

CSX Transportation, Inc.—Abandonment Exemption—in Marion County, IN

CSX Transportation, Inc. (CSXT) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a 1.01-mile line of railroad, known as the Arlington Industrial Track, located on its Northern Region, Great Lakes Division, Indianapolis Belt Subdivision, extending from milepost QIA 1.11 (English Ave.) to the end of the track at milepost QIA 0.1 in Marion County, IN. The line traverses United States Postal Service Zip Code 46219 and includes no stations.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 4, 2008, unless stayed pending reconsideration.[1] Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR

[14] 17 CFR 200.30–3(a)(12).

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before the abandonment or discontinuance is to be consummated. The applicant initially indicated a proposed consummation date of November 1, 2008, but because the verified notice was filed on September 15, 2008, consummation may not take place prior to November 4, 2008.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 14, 2008. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 23, 2008, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Kathryn R. Barney, CSX Transportation, Inc., 500 Water Street, J–150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed environmental and historic reports that address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 10, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by October 3, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 25, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–23072 Filed 10–2–08; 8:45 am]

BILLING CODE 4915–01–P

[3] Effective July 18, 2008, the filing fee for an OFA increased to $1,500. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2008 Update,* STB Ex Parte No. 542 (Sub-No. 15) (STB served June 18, 2008).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35174]

Watco Companies, Inc.—Continuance in Control Exemption—Pacific Sun Railroad, L.L.C.

Watco Companies, Inc. (Watco), a noncarrier, has filed a verified notice of exemption to continue in control of Pacific Sun Railroad, L.L.C. (PSRR), upon PSRR's becoming a Class III rail carrier.[1]

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35173, *Pacific Sun Railroad, L.L.C.—Lease and Operation Exemption—BNSF Railway Company*. In that proceeding, PSRR seeks an exemption under 49 CFR 1150.31 to lease from BNSF Railway Company (BNSF) and to operate approximately 21.5 miles of rail line and rail freight easement between specified points in California. In addition, PSRR will receive incidental trackage rights from BNSF to provide local service over an approximately 45.49-mile reserved rail freight service easement in California.

The parties intend to consummate the transaction on or about October 24, 2008, and hence after the October 17, 2008 effective date of the exemption.

Watco currently controls 18 Class III rail carriers: South Kansas and Oklahoma Railroad Company, Palouse River & Coulee City Railroad, Inc., Timber Rock Railroad, Inc., Stillwater Central Railroad, Inc., Eastern Idaho Railroad, Inc., Kansas & Oklahoma Railroad, Inc., Pennsylvania Southwestern Railroad, Inc., Great Northwest Railroad, Inc., Kaw River Railroad, Inc., Mission Mountain Railroad, Inc., Mississippi Southern Railroad, Inc., Yellowstone Valley Railroad, Inc., Louisiana Southern Railroad, Inc., Arkansas Southern Railroad, Inc., Alabama Southern Railroad, Inc., Vicksburg Southern Railroad, Inc, Austin Western Railroad, Inc, and Baton Rouge Southern Railroad, LLC.

Watco represents that: (1) The rail lines to be operated by PSRR do not connect with any other railroads in the Watco corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect these rail lines with any other railroad in the Watco corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified 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 no later than October 10, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35174, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik, LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: September 26, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–23376 Filed 10–2–08; 8:45 am]

BILLING CODE 4915–01–P

[1] Watco owns 100% of the issued and outstanding stock of PSRR.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35173]

Pacific Sun Railroad, L.L.C.—Lease and Operation Exemption—BNSF Railway Company

Pacific Sun Railroad, L.L.C. (PSRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire, by lease, and to operate approximately 21.5 miles of BNSF Railway Company's (BNSF) rail lines and freight rail easement in California.[1]

[1] PSRR states that it has been negotiating an agreement with BNSF and expects to finalize the agreement in the very near future. According to PSRR, the agreement will not contain any provision

PSRR will lease BNSF's approximately 21.2-mile reserved rail freight service easement over the Escondido Subdivision rail corridor between milepost 0.0, at Oceanside Junction, CA, and milepost 21.2, at the end of the corridor, in Escondido, CA. PSRR will also lease BNSF's approximately 0.3-mile (not including the yard tracks) Miramar Spur and rail yard located east of milepost 252.9 on BNSF's San Diego Subdivision.

BNSF will also grant PSRR incidental trackage rights to provide local service over BNSF's approximately 45.49-mile reserved rail freight service easement on the San Diego Subdivision between milepost 252.9, near San Diego, CA, and milepost 207.41, at the San Diego County and Orange County border, including the Stuart Mesa Yard.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35174, *Watco Companies, Inc.—Continuance in Control Exemption—Pacific Sun Railroad, L.L.C.* In that proceeding, Watco Companies, Inc., has filed a verified notice of exemption to continue in control of PSRR upon PSRR's becoming a Class III rail carrier.

PSRR certifies that its projected annual revenues as a result of the transaction will not result in PSRR becoming a Class II or Class I rail carrier and further certifies that its projected annual revenues will not exceed $5 million.

The transaction is expected to be consummated on or about October 24, 2008, and hence after the October 17, 2008 effective date of the exemption.

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. No. 110–161, § 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.

If the verified 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. Petitions for stay must be filed no later than October 10, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35173, 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 Karl Morell, of Counsel, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 26, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–23375 Filed 10–2–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of 8 additional individuals whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the eight individuals identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On September 30, 2008, OFAC designated eight additional individuals whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The list of additional designees is as follows:

1. LESMES BULLA, Jairo Alfonso (a.k.a. CALDERON, Javier); Colombia; DOB 25 Mar 1947; Citizen Colombia; Cedula No. 17164408 (Colombia); International FARC Commission Member for Argentina, Chile, Uruguay, and Paraguay; (INDIVIDUAL) [SDNTK].

2. TREJO FREIRE, Efrain Pablo (a.k.a. TREJOS FREYRE, Pablo); Colombia; DOB 07 Jun 1951; Citizen Colombia; Cedula No. 13004986 (Colombia); International FARC Commission Member for Peru; (INDIVIDUAL) [SDNTK].

3. JURADO PALOMINO, Orlay (a.k.a. ''Libardo Antonio BENAVIDES MONCAYO''; a.k.a. ''Commander Hermes''); Colombia; DOB 09 Feb 1950; Citizen Colombia; Cedula No. 7245990 (Colombia); International FARC

that prohibits PSRR from interchanging traffic with a third party.

Commission Member for Venezuela; (INDIVIDUAL) [SDNTK].

4. SALINAS PEREZ, Ovidio (a.k.a. ROJAS, Juan Antonio; a.k.a. ''Jose Luis''; a.k.a. ''El Embajador''); Colombia; DOB 03 Jul 1945; Citizen Colombia; Cedula No. 17125959 (Colombia); International FARC Commission Member for Panama; (INDIVIDUAL) [SDNTK].

5. DAVALOS TORRES, Jorge, Colombia; DOB 14 Dec 1972; Citizen Colombia; Cedula No. 94377215 (Colombia); International FARC Commission Member for Canada; (INDIVIDUAL) [SDNTK].

6. CADENA COLLAZOS, Francisco Antonio (a.k.a. MEDINA, Oliverio; a.k.a. ''El Cura''; a.k.a. ''Cura CAMILO''; a.k.a. ''OLIVO''; a.k.a. ''HUESITO''; a.k.a. ''PACHO''); Colombia; Brazil; DOB 01 Jan 1947; Citizen Colombia; Cedula No. 4904771 (Colombia); International FARC Commission Member for Brazil; (INDIVIDUAL) [SDNTK].

7. CALDERON DE TRUJILLO, Nubia (a.k.a. ''ESPERANZA''); Colombia; DOB 25 Mar 1956; Citizen Colombia; Cedula No. 36159126 (Colombia); International FARC Commission Member for Ecuador; (INDIVIDUAL) [SDNTK].

8. LOPEZ PALACIOS, Liliana (a.k.a. LUCIA MARIN, Olga); Colombia; DOB 21 Sep 1961; Citizen Colombia; Cedula No. 51708175 (Colombia); International FARC Commission Member for Mexico; (INDIVIDUAL) [SDNTK].

Dated: September 30, 2008.

Barbara Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E8–23358 Filed 10–2–08; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of United States Mint Silver Eagle Bullion Coin Premium Adjustment

ACTION: Notification of United States Mint Silver Eagle Bullion Coin Premium Adjustment.

SUMMARY: The United States Mint is adjusting the premium charged to Authorized Purchasers for American Eagle Silver Bullion Coins, which the agency mints and issues in accordance with 31 U.S.C. 5112(e).

Because of increases in the cost of acquiring silver blanks, the United States Mint will increase the premium charged to Authorized Purchasers for American Eagle Silver Bullion Coins, from $1.25 to $1.40 per coin, for all orders accepted on or after October 14, 2008.

FOR FURTHER INFORMATION CONTACT: Gloria C. Eskridge, Associate Director for Sales and Marketing; United States Mint; 801 Ninth Street, NW.; Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5112(f)(1).

Dated: September 29, 2008.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E8–23477 Filed 10–2–08; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0381]

Proposed Information Collection (Report Transfer of Custody Event) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the holder's election to convey property to VA.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 2, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0381'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L.104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Report Transfer of Custody Event, VA Form 26–8903.

OMB Control Number: 2900–0381.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–8903 serves four purposes: Holder's election to convey, invoice for the purchase price of the property, VA's voucher for authorizing payment to the holder, and establishment of VA's property records. The form provides holders who elected to convey properties to VA with a convenient and uniform way of notifying VA regarding a foreclosed GI home loan.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,500 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Total Respondents: 15,000.

Dated: September 26, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–23338 Filed 10–2–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0132]

Proposed Information Collection (Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a veteran's eligibility for specially adapted housing or special home adaptation grant.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 2, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0132'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant, VA Form 26–4555.

OMB Control Number: 2900–0132.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans with service-connected disability complete VA form 26–4555 to apply for assistance in acquiring specially adapted housing or the special home adaptation grant. VA uses the data collected to determine the veteran's eligibility.

Affected Public: Individuals or households.

Estimated Annual Burden: 500 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,000.

Dated: September 26, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–23339 Filed 10–2–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW (21–2680)]

Agency Information Collection (Exam for Housebound Status or Permanent Need for Regular Aid and Attendance) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 3, 2008.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–NEW (21–2680)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–NEW (21–2680).''

SUPPLEMENTARY INFORMATION:

Title: Exam for Housebound Status or Permanent Need for Regular Aid and Attendance, VA Form 21–2680.

OMB Control Number: 2900–NEW (21–2680).

Type of Review: New collection.

Abstract: VA will use VA Form 21–2680 to gather medical information that is necessary to determine beneficiaries or claimants receiving treatment from private doctors or physicians, eligibility for aid and attendance or housebound benefit.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 23, 2008, at pages 42922–42923.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 7,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 14,000.

Dated: September 26, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–23340 Filed 10–2–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Former Prisoners of War has scheduled a meeting for October 27–29, 2008, in Jackson, Mississippi. On October 27–28, the meeting will be held at the Sonny Montgomery Veterans Affairs Medical Center, 1500 E. Woodrow Wilson Drive. On October 29, it will be held at the Hilton-Jackson Hotel, 1001 E. County Line Road. The meeting will be held each day from 9 a.m. to 4 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the needs of such veterans for compensation, health care, and rehabilitation.

The meeting will begin with remarks from dignitaries, a review of committee reports, and an update of activities since the last meeting. A town hall meeting will be held on October 27 at 1:30 p.m. On October 28, the Committee will hear presentations from representatives of the Robert E. Mitchell Center for Prisoner of War Studies and the VA Employee Education System. The day will conclude with new business and general discussion. On October 29, the Committee's medical and administrative work groups will meet to discuss their activities and then will report back to the Committee in the afternoon. Additionally, the Committee will review comments discussed throughout the meeting to compile a report to be sent to the Secretary.

Members of the public may submit written statements for review by the Committee in advance of the meeting to Mr. Bradley G. Mayes, Director, Compensation and Pension Service, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Submitted materials must be received by October 15, 2008.

Dated: September 29, 2008.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E8–23441 Filed 10–2–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Environmental Hazards; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held on October 27–28, 2008, in room 648 at 810 Vermont Avenue, NW., Washington, DC, The meeting will be held from 8 a.m. to 4:30 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on adverse health effects that may be associated with exposure to ionizing radiation, and to make recommendations on proposed standards and guidelines regarding VA benefit claims based upon exposure to ionizing radiation.

The major items on the agenda will be discussions of medical and scientific papers concerning the health effects of exposure to ionizing radiation. On the basis of the discussions, the Committee may make recommendations to the Secretary concerning the relationship of certain diseases exposured to ionizing radiation. The October 28 session will include planning for future Committee activities and assignment of tasks among members.

An open forum for verbal statements from the public will be available for 30 minutes in the afternoon each day. People wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis and will be provided three minutes per statement.

Members of the public wishing to attend should contact Ms. Bernice Green at the Department of Veterans Affairs, Compensation and Pension Service, 810 Vermont Avenue, NW., Washington, DC 20420, by phone at (202) 461–9723, or by fax at (202) 275–1728. Individuals should submit written questions or prepared statements for the Committee's review to Ms. Green at least five days prior to the meeting. The Committee may ask those who submit material for clarification prior to its consideration.

Dated: September 29, 2008.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E8–23439 Filed 10–2–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
October 3, 2008

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5186–N–40]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Ms. Kathryn Halvorson, Air Force Real Property Agency, 1700 North Moore St., Suite 2300, Arlington, VA 22209; (703) 696–5502; *Energy:* Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave., SW., Washington, DC 20585: (202) 586–5422; (These are not toll-free numbers).

Dated: September 25, 2008.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 10/03/2008

Suitable/Available Properties

Building

Hawaii

Bldg. 849
Bellows AFS
Bellows AFS HI
Landholding Agency: Air Force
Property Number: 18200330008
Status: Unutilized
Comments: 462 sq. ft., concrete storage facility, off-site use only

New York

Bldg. 240
Rome Lab
Rome Co: Oneida NY 13441
Landholding Agency: Air Force
Property Number: 18200340023
Status: Unutilized
Comments: 39108 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 247
Rome Lab
Rome Co: Oneida NY 13441
Landholding Agency: Air Force
Property Number: 18200340024
Status: Unutilized
Comments: 13199 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Suitable/Available Properties

Building

New York

Bldg. 248
Rome Lab
Rome Co: Oneida NY 13441
Landholding Agency: Air Force
Property Number: 18200340025
Status: Unutilized
Comments: 4000 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 302
Rome Lab
Rome Co: Oneida NY 13441
Landholding Agency: Air Force
Property Number: 18200340026
Status: Unutilized
Comments: 10288 sq. ft., presence of asbestos, most recent use—communications facility

Land

California

Parcels L1 & L2
George AFB
Victorville CA 92394
Landholding Agency: Air Force
Property Number: 18200820034

Status: Excess
Comments: 157 acres/desert, pump-and-treat system, groundwater restrictions, AF access rights, access restrictions, environmental concerns

Suitable/Available Properties

Land

Missouri

Communications Site
County Road 424
Dexter Co: Stoddard MO
Landholding Agency: Air Force
Property Number: 18200710001
Status: Unutilized
Comments: 10.63 acres

North Carolina

0.14 acres
Pope AFB
Pope AFB NC
Landholding Agency: Air Force
Property Number: 18200810001
Status: Excess
Comments: Most recent use—middle marker, easement for entry

Texas

0.13 acres
DYAB, Dyess AFB
Tye Co: Taylor TX 79563
Landholding Agency: Air Force
Property Number: 18200810002
Status: Unutilized
Comments: Most recent use—middle marker, access limitation

Suitable/Unavailable Properties

Building

Washington

22 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420001
Status: Unutilized
Comments: 1625 sq. ft., possible asbestos/lead paint, most recent use—residential

Bldg. 404/Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420002
Status: Unutilized
Comments: 1996 sq. ft., possible asbestos/lead paint, most recent use—residential

11 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420003
Status: Unutilized
Comments: 2134 sq. ft., possible asbestos/lead paint, most recent use—residential

Bldg. 297/Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420004
Status: Unutilized
Comments: 1425 sq. ft., possible asbestos/lead paint, most recent use—residential

Suitable/Unavailable Properties

Building

Washington

9 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420005
Status: Unutilized
Comments: 1620 sq. ft., possible asbestos/lead paint, most recent use—residential

22 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420006
Status: Unutilized
Comments: 2850 sq. ft., possible asbestos/lead paint, most recent use—residential

51 Bldgs./Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420007
Status: Unutilized
Comments: 2574 sq. ft., possible asbestos/lead paint, most recent use—residential

Bldg. 402/Geiger Heights
Fairchild AFB
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420008
Status: Unutilized
Comments: 2451 sq. ft., possible asbestos/lead paint, most recent use—residential

Suitable/Unavailable Properties

Building

Washington

5 Bldgs./Geiger Heights
Fairchild AFB
222, 224, 271, 295, 260
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420009
Status: Unutilized
Comments: 3043 sq. ft., possible asbestos/lead paint, most recent use—residential

5 Bldgs./Geiger Heights
Fairchild AFB
102, 183, 118, 136, 113
Spokane WA 99224
Landholding Agency: Air Force
Property Number: 18200420010
Status: Unutilized
Comments: 2599 sq. ft., possible asbestos/lead paint, most recent use—residential

Land

South Dakota

Tract 133
Ellsworth AFB
Box Elder Co: Pennington SD 57706
Landholding Agency: Air Force
Property Number: 18200310004
Status: Unutilized
Comments: 53.23 acres

Suitable/Unavailable Properties

Land

South Dakota

Tract 67
Ellsworth AFB
Box Elder Co: Pennington SD 57706
Landholding Agency: Air Force
Property Number: 18200310005
Status: Unutilized
Comments: 121 acres, bentonite layer in soil, causes movement

Unsuitable Properties

Building

Alaska

Bldg. 9485
Elmendorf AFB
Elmendorf AK
Landholding Agency: Air Force
Property Number: 18200730001
Status: Unutilized
Reasons: Secured Area

Bldg. 70500
Seward AFB
Seward AK 99664
Landholding Agency: Air Force
Property Number: 18200820001
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

Alaska

Bldg. 3224
Eielson AFB
Eielson AK 99702
Landholding Agency: Air Force
Property Number: 18200820002
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Arizona

Railroad Spur
Davis-Monthan AFB
Tucson AZ 85707
Landholding Agency: Air Force
Property Number: 18200730002
Status: Excess
Reasons: Within airport runway clear zone

California

Bldgs. 5001 thru 5082
Edwards AFB
Area A
Los Angeles CA 93524
Landholding Agency: Air Force
Property Number: 18200620002
Status: Unutilized
Reasons: Extensive deterioration; Secured Area

Unsuitable Properties

Building

California

Garages 25001 thru 25100
Edwards AFB
Area A
Los Angeles CA 93524
Landholding Agency: Air Force
Property Number: 18200620003
Status: Unutilized
Reasons: Extensive deterioration; Secured Area

Bldg. 00275
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force

Property Number: 18200730003
Status: Unutilized
Reasons: Extensive deterioration; Secured Area; Within airport runway clear zone

Bldgs. 02845, 05331, 06790
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18200740001
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties

Building

California

Bldgs. 07173, 07175, 07980
Edwards AFB
Kern CA 93524
Landholding Agency: Air Force
Property Number: 18200740002
Status: Unutilized
Reasons: Secured Area

Bldg. 5308
Edwards AFB
Kern CA 93523
Landholding Agency: Air Force
Property Number: 18200810003
Status: Unutilized
Reasons: Extensive deterioration; Secured Area

Facility 100
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200810004
Status: Excess
Reasons: Extensive deterioration; Secured Area

Unsuitable Properties

Building

California

Bldgs. 1185, 1186, 1187
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820005
Status: Unutilized
Reasons: Secured Area

5 Bldgs.
Vandenberg AFB 1521, 1522, 1523, 1753, 1826 Vandenberg CA 93437
Landholding Agency: Air Force Property Number: 18200820006 Status: Unutilized
Reasons: Secured Area

Bldgs. 1952, 1953, 1957, 1958
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820007
Status: Unutilized
Reasons: Secured Area

Bldgs. 1992, 1995
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820008
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

California

Bldgs. 10755, 11008
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820009
Status: Unutilized
Reasons: Secured Area

4 Bldgs.
Vandenberg AFB 13140, 13401, 13402, 13407
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820010
Status: Unutilized
Reasons: Secured Area

Bldg. 16133
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820011
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

California

5 Bldgs.
Pt. Arena AF Station
101, 102, 104, 105, 108
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820019
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. 160, 161, 166
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820020
Status: Excess
Reasons: Secured Area; Extensive deterioration

8 Bldgs.
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820021
Status: Excess
Directions: 201, 202, 203, 206, 215, 216, 217, 218
Reasons: Extensive deterioration; Secured Area

Unsuitable Properties

Building

California

7 Bldgs.
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820022
Status: Excess
Directions: 220, 221, 222, 223, 225, 226, 228
Reasons: Secured Area; Extensive deterioration

Bldg. 408
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820023
Status: Excess
Reasons: Extensive deterioration; Secured Area

Bldgs. 601 thru 610
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820024
Status: Excess
Reasons: Extensive deterioration; Secured Area

Unsuitable Properties

Building

California

Bldgs. 611–619
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820025
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. 620 thru 627
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820026
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldgs. 654, 655, 690
Pt. Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820027
Status: Excess
Reasons: Secured Area; Extensive deterioration

Unsuitable Properties

Building

California

Bldgs. 300, 387
Pt Arena Comm Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820029
Status: Excess
Reasons: Extensive deterioration; Secured Area

Bldgs. 700, 707, 796, 797
Pt. Arena Comm Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820030
Status: Excess
Reasons: Extensive deterioration; Secured Area

Bldgs. 748, 838
Vandenberg AFB
Vandenberg CA 93437
Landholding Agency: Air Force
Property Number: 18200820033
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

California

Bldgs. M03, MO14, MO17
Sandia National Lab

Livermore Co: Alameda CA 94550
Landholding Agency: Energy
Property Number: 41200220001
Status: Excess
Reasons: Extensive deterioration

Bldgs. C920, C921, C922
Sandia Natl Laboratories
Livermore Co: Alameda CA 94551
Landholding Agency: Energy
Property Number: 41200540001
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 175
Livermore National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200630001
Status: Excess
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material

Unsuitable Properties

Building

California

Trailer 1403
Livermore National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200630003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Trailer 3703
Livermore National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200630004
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 363
National Laboratory
Livermore CA
Landholding Agency: Energy
Property Number: 41200710001
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

California

Bldgs. 436, 446
National Laboratory
Livermore CA
Landholding Agency: Energy
Property Number: 41200710002
Status: Excess
Reasons: Secured Area

Bldg. 3520
National Laboratory
Livermore CA
Landholding Agency: Energy
Property Number: 41200710003
Status: Excess
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material

Bldgs. 4182, 4184, 4187
National Laboratory
Livermore CA
Landholding Agency: Energy
Property Number: 41200710004
Status: Excess
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material

Unsuitable Properties

Building

California

Bldg. 5974
National Laboratory
Livermore CA
Landholding Agency: Energy
Property Number: 41200710005
Status: Excess
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material

Bldgs. 194A, 198
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720007
Status: Excess
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material

Bldgs. 213, 280
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720008
Status: Excess
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material

Unsuitable Properties

Building

California

Bldgs. 312, 345
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720009
Status: Excess
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material

Bldgs. 2177, 2178
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720010
Status: Excess
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material

Bldgs. 2687, 3777
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720011
Status: Excess
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material

Unsuitable Properties

Building

California

Bldgs. 263, 419
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720012
Status: Excess
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material

Bldgs. 1401, 1402, 1404
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720013
Status: Excess
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material

Bldgs. 1405, 1406, 1407
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720014
Status: Excess
Reasons: Secured Area; Within 2000 ft. of flammable or explosive material

Unsuitable Properties

Building

California

Bldgs. 1408, 1413, 1456
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720015
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 2684
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720016
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. CM46A
Sandia Natl Lab
Livermore CA 94551
Landholding Agency: Energy
Property Number: 41200730005
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

California

Bldgs. 445, 534
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

4 Bldgs.
Lawrence Livermore Natl Lab
802A, 811, 830, 854A
Livermore CA
Landholding Agency: Energy
Property Number: 41200740002
Status: Excess
Reasons: Secured Area
Within 2000 ft. of flammable or explosive material

Bldgs. 8806, 8710, 8711
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Unsuitable Properties

Building

California

Bldgs. 1492, 1526, 1579
Lawrence Livermore
National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740005
Status: Excess
Reasons: Secured Area

Bldgs. 1601, 1632
Lawrence Livermore
National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740006
Status: Excess
Reasons: Secured Area

Bldgs. 2552, 2685, 2728
Lawrence Livermore
National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740007
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

California

Bldgs. 2801, 2802
Lawrence Livermore
National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740008
Status: Excess
Reasons: Secured Area

Bldgs. 3175, 3751, 3775
Lawrence Livermore
National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740009
Status: Excess
Reasons: Secured Area

4 Bldgs.
Lawrence Livermore
National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740010
Status: Excess
Directions: 4161, 4316, 4384, 4388
Reasons: Secured Area

Unsuitable Properties

Building

California

Bldgs. 4406, 4475
Lawrence Livermore
National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740011
Status: Excess
Reasons: Secured Area

Bldgs. 4905, 4906, 4926
Lawrence Livermore
National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740012
Status: Excess
Reasons: Secured Area

Bldg. 5425
Lawrence Livermore
National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740013
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

California

Bldg. 71G
Lawrence Berkeley Natl Lab
Berkeley CA 94720
Landholding Agency: Energy
Property Number: 41200820001
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 51, 51A
Lawrence Berkeley Natl Lab
Berkeley CA 94720
Landholding Agency: Energy
Property Number: 41200820002
Status: Excess
Reasons:
Extensive deterioration

Connecticut

Bldgs. 25 and 26
Prospect Hill Road
Windsor Co: Hartford CT 06095
Landholding Agency: Energy
Property Number: 41199440003
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

Connecticut

9 Bldgs.
Knolls Atomic Power Lab, Windsor Site
Windsor Co: Hartford CT 06095
Landholding Agency: Energy
Property Number: 41199540004
Status: Excess
Reasons: Secured Area

Bldg. 8, Windsor Site
Knolls Atomic Power Lab
Windsor Co: Hartford CT 06095
Landholding Agency: Energy
Property Number: 41199830006
Status: Unutilized
Reasons: Extensive deterioration

Florida

Bldg. 01248
Cape Canaveral AFS
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18200740003
Status: Unutilized
Reasons: Secured Area

Bldg. 44426
Cape Canaveral AFS
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18200740004
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

Florida

Bldg. 85406
Cape Canaveral AFS
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18200740005
Status: Unutilized
Reasons: Secured Area

Facility 70520, 10754
Cape Canaveral AFS
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18200810005
Status: Unutilized
Reasons: Secured Area

Georgia

6 Cabins
QSRG Grassy Pond Rec Annex
Lake Park GA 31636
Landholding Agency: Air Force
Property Number: 18200730004
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 101, 102, 103
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200810006
Status: Excess
Reasons: Extensive deterioration

Unsuitable Properties

Building

Georgia

Bldgs. 330, 331, 332, 333
Moody AFB
Lowndes GA 31699
Landholding Agency: Air Force
Property Number: 18200810007
Status: Excess
Reasons: Extensive deterioration

Bldgs. 794, 1541
Moody AFB
Lowndes GA
Landholding Agency: Air Force
Property Number: 18200820012
Status: Unutilized
Reasons: Secured Area

Hawaii

Bldg. 1815
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200730005
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 1028, 1029
Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200740006
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

Hawaii

Bldgs. 1710, 1711

Hickam AFB
Hickam HI 96853
Landholding Agency: Air Force
Property Number: 18200740007
Status: Unutilized
Reasons: Secured Area

Idaho

Bldg. CPP–691
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610003
Status: Unutilized
Reasons: Secured Area

Bldg. TRA–669
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610013
Status: Unutilized
Reasons: Secured Area

Bldg. TRA–673
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610018
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

Idaho

Bldg. PBF–620
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610019
Status: Unutilized
Reasons: Secured Area

Bldg. PBF–619
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610022
Status: Unutilized
Reasons: Secured Area

Bldg. TRA–641
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610034
Status: Unutilized
Reasons: Secured Area

Bldg. CF–606
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610037
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

Idaho

Bldgs. CPP638, CPP642
Idaho Natl Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410014
Status: Excess
Reasons: Secured Area

Bldg. CPP 743
Idaho Natl Eng lab
Scoville Co: Butte ID 83–415
Landholding Agency: Energy
Property Number: 41200410020
Status: Excess
Reasons: Secured Area

Bldgs. CPP1647, 1653
Idaho Natl Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410022
Status: Excess
Reasons: Secured Area

Bldg. CPP1677
Idaho Natl Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410023
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

Idaho

Bldg. 694
Idaho Natl Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410034
Status: Excess
Reasons: Secured Area

Bldgs. CPP1604–CPP1608
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430071
Status: Excess
Reasons: Secured Area

Bldgs. CPP1617–CPP1619
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430072
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

Idaho

6 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430073
Status: Excess
Directions: CPP1631, CPP1634, CPP1635, CPP1636, CPP1637, CPP1638
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430074
Status: Excess
Directions: CPP1642, CPP1643, CPP1644, CPP1646, CPP1649
Reasons: Secured Area

3 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430075
Status: Excess
Directions: CPP1650, CPP1651, CPP1656
Reasons: Secured Area

Unsuitable Properties

Building

Idaho

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430076
Status: Excess
Directions: CPP1662, CPP1663, CPP1671, CPP1673, CPP1674
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430077
Status: Excess
Directions: CPP1678, CPP1682, CPP1683, CPP1684, CPP1686
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430078
Status: Excess
Directions: CPP1713, CPP1749, CPP1750, CPP1767, CPP1769
Reasons: Secured Area

Unsuitable Properties

Building

Idaho

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430079
Status: Excess
Directions: CPP1770, CPP1771, CPP1772, CPP1774, CPP1776
Reasons: Secured Area

4 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430081
Status: Excess
Directions: CPP1789, CPP1790, CPP1792, CPP1794
Reasons: Secured Area

Bldgs. CPP2701, CPP2706
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430082
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

Idaho

3 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430089
Status: Excess
Directions: TRA603, TRA604, TRA610
Reasons: Secured Area

Bldg. TAN611
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430090
Status: Excess
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430091
Status: Excess
Directions: TRA626, TRA635, TRA642, TRA648, TRA654
Reasons: Secured Area

Unsuitable Properties

Building

Idaho

Bldg. TAN655
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430092
Status: Excess
Reasons: Secured Area

3 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430093
Status: Excess
Directions: TRA657, TRA661, TRA668
Reasons: Secured Area

Bldg. TAN711
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430094
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

Idaho

6 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430095
Status: Excess
Directions: CPP602–CPP606, CPP609
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430096
Status: Excess
Directions: CPP611–CPP614, CPP616
Reasons: Secured Area

4 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430097
Status: Excess
Directions: CPP621, CPP626, CPP630, CPP639
Reasons: Secured Area

Unsuitable Properties

Building

Idaho

4 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430098
Status: Excess
Directions: CPP641, CPP644, CPP645, CPP649
Reasons: Secured Area

Bldgs. CPP651–CPP655
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430099
Status: Excess
Reasons: Secured Area

Bldgs. CPP659–CPP663
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440001
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

Idaho

Bldgs. CPP666, CPP668
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440002
Status: Excess
Reasons: Secured Area

1 Bldg.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440004
Status: Excess
Directions: CPP684
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440005
Status: Excess
Directions: CPP692, CPP694, CPP697–CPP699
Reasons: Secured Area

Unsuitable Properties

Building

Idaho

3 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440006
Status: Excess
Directions: CPP701, CPP701A, CPP708
Reasons: Secured Area

Bldgs. 711, 719A
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440007
Status: Excess
Reasons: Secured Area

4 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440008
Status: Excess
Directions: CPP724–CPP726, CPP728
Reasons: Secured Area

Unsuitable Properties

Building

Idaho

Bldg. CPP729/741
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440012
Status: Excess
Reasons: Secured Area

Bldgs. CPP733, CPP736
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440013
Status: Excess
Reasons: Secured Area

Bldgs. CPP740, CPP742
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440014
Status: Excess
Reasons: Secured Area

Bldgs. CPP746, CPP748
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440015
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

Idaho

3 Bldgs.
Idaho National Eng Lab
CPP750, CPP751, CPP752
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440016
Status: Excess
Reasons: Secured Area

3 Bldgs.
Idaho National Eng Lab
CPP753, CPP753A, CPP754
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440017
Status: Excess
Reasons: Secured Area

Bldgs. CPP760, CPP763
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440018
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

Idaho

Bldgs. CPP764, CPP765
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440019
Status: Excess
Reasons: Secured Area

Bldgs. CPP767, CPP768
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440020
Status: Excess
Reasons: Secured Area

Bldgs. CPP791, CPP795
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440021
Status: Excess
Reasons: Secured Area

3 Bldgs.
Idaho National Eng Lab
CPP796, CPP797, CPP799
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440022
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

Idaho

Bldgs. CPP701B, CPP719
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440023
Status: Excess
Reasons: Secured Area

Bldgs. CPP720A, CPP720B
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440024
Status: Excess
Reasons: Secured Area

Bldg. CPP1781
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440025
Status: Excess
Reasons: Secured Area

2 Bldgs.
Idaho National Eng Lab
CPP0000VES–UTI–111, VES–UTI–112
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440026
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

Idaho

Bldgs. TAN704, TAN733
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440028
Status: Excess
Reasons: Secured Area

Bldgs. TAN1611, TAN1614
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440029
Status: Excess
Reasons: Secured Area

Bldg. CF633
Idaho Natl Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200520005
Status: Excess
Reasons: Extensive deterioration

Bldgs. B23–602, B27–601
Idaho Natl Laboratory
Idaho Falls ID 83415
Landholding Agency: Energy
Property Number: 41200820003
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

Idaho

Bldgs. CF–635, CF650
Idaho Natl Laboratory
Idaho Falls ID 83415
Landholding Agency: Energy
Property Number: 41200820005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. CF–662, CF–692
Idaho Natl Laboratory
Idaho Falls ID 83415
Landholding Agency: Energy
Property Number: 41200820006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Illinois

Bldgs. 306A, B, C, TR–5
Argonne National Lab
Argonne IL 60439
Landholding Agency: Energy
Property Number: 41200720017
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

Illinois

Trailers 092, 120, 121, 143
Fermi Natl Accelerator lab
Batavia IL 60510
Landholding Agency: Energy
Property Number: 41200740004
Status: Excess
Reasons: Extensive deterioration

Bldg. 40
Argonne National Lab
DuPage IL 60439
Landholding Agency: Energy
Property Number: 41200820007
Status: Excess
Reasons: Contamination, Secured Area

Louisiana

Barksdale Middle Marker
Bossier LA 71112
Landholding Agency: Air Force
Property Number: 18200730006
Status: Excess
Reasons: Extensive deterioration

Unsuitable Properties

Building

Maine

Facilities 1, 2, 3, 4
OTH-B Site
Moscow ME 04920
Landholding Agency: Air Force
Property Number: 18200730007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material

Montana

Bldg. 1881
Malmstrom AFB
Cascade MT 59402
Landholding Agency: Air Force
Property Number: 18200820013
Status: Unutilized
Reasons: Secured Area

Nevada

Bldg. 33400
Ely
Ely NV 89301
Landholding Agency: Air Force
Property Number: 18200820014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Unsuitable Properties

Building

Nevada

28 Facilities
Nevada Test Site
Mercury Co: Nye NV 89023
Landholding Agency: Energy
Property Number: 41200310018
Status: Excess
Reasons: Other—contamination, Secured Area

31 Bldgs./Facilities
Nellis AFB
Tonopah Test Range
Tonopah Co: Nye NV 89049
Landholding Agency: Energy
Property Number: 41200330003
Status: Unutilized
Reasons: Secured Area

42 Bldgs.
Nellis Air Force Base
Tonopah Co: Nye NV 89049
Landholding Agency: Energy
Property Number: 41200410029
Status: Unutilized
Directions:
49–01, NM104, NM105, 03–35A–H, 03–35J–N, 03–36A–C, 03–36E–H, 03–36J–N, 03–36R, 03–37, 15036, 03–44A–D, 03–46, 03–47, 03–49, 03–88, 03–89, 03–90
Reasons: Secured Area

Unsuitable Properties

Building

Nevada

241 Bldgs.
Tonopah Test Range
Tonopah Co: Nye NV 89049
Landholding Agency: Energy
Property Number: 41200440036
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

10 Bldgs.
Nevada Test Site
Mercury Co: Nye NV 89023
Landholding Agency: Energy
Property Number: 41200610003
Status: Excess
Reasons: Secured Area

New Hampshire

Bldgs. 122, 153, 501, 502
New Boston AF Station
Hillsborough NH
Landholding Agency: Air Force
Property Number: 18200820015
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

New Mexico

Bldg. 1016
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200730008
Status: Unutilized
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 40, 841
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200820016
Status: Underutilized
Reasons: Secured Area

Bldgs. 436, 437
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18200820017
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Unsuitable Properties

Building

New Mexico

Bldgs. 88, 89
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830020
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material, Extensive deterioration

Bldgs. 312, 322
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830021
Status: Unutilized
Reasons: Secured Area

Bldg. 569
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830022
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Unsuitable Properties

Building

New Mexico

Bldgs. 807, 833
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 1245
Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200830024
Status: Unutilized
Reasons: Secured Area

Bldgs. 9252, 9268
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185
Landholding Agency: Energy
Property Number: 41199430002
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties

Building

New Mexico

Tech Area II
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87105
Landholding Agency: Energy
Property Number: 41199630004
Status: Unutilized
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 26, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810004
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 2, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810008
Status: Underutilized
Reasons: Secured Area

Unsuitable Properties

Building

New Mexico

Bldg. 5, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810011
Status: Unutilized
Reasons: Secured Area

Bldg. 116, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810013
Status: Unutilized
Reasons: Secured Area

Bldg. 286, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810016
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

New Mexico

Bldg. 516, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810021
Status: Unutilized
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 517, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810022
Status: Unutilized
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 31
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199930003
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Unsuitable Properties

Building

New Mexico

Bldg. 38, TA–14
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940004
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 9, TA–15
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940006
Status: Unutilized
Reasons: Secured Area

Bldg. 141, TA–15
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940008
Status: Unutilized

Reasons: Secured Area

Bldg. 44, TA–15
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940009
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

New Mexico

Bldg. 2, TA–18
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940010
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 5, TA–18
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940011
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 186, TA–18
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940012
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Unsuitable Properties

Building

New Mexico

Bldg. 188, TA–18
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940013
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 44, TA–36
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940015
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 45, TA–36
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940016
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Unsuitable Properties

Building

New Mexico

Bldg. 258, TA–46
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940019
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

TA–3, Bldg. 208
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010010
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

TA–14, Bldg. 5
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010019
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

New Mexico

TA–21, Bldg. 150
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010020
Status: Unutilized
Reasons: Secured Area

Bldg. 149, TA–21
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010024
Status: Unutilized
Reasons: Secured Area

Bldg. 312, TA–21
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010025
Status: Unutilized
Reasons: Secured Area

Bldg. 313, TA–21
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010026
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

New Mexico

Bldg. 314, TA–21
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010027
Status: Unutilized
Reasons: Secured Area

Bldg. 315, TA–21
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010028
Status: Unutilized
Reasons: Secured Area

Bldg. 1, TA–8
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010029
Status: Unutilized
Reasons: Secured Area

Bldg. 2, TA–8
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010030
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Unsuitable Properties

Building

New Mexico

Bldg. 3, TA–8
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020001
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 51, TA–9
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020002
Status: Unutilized
Reasons: Secured Area

Bldg. 30, TA–14
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020003
Status: Unutilized
Reasons: Secured Area

Bldg. 16, TA–3
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020009
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

New Mexico

Bldg. 48, TA–55
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020017
Status: Unutilized
Reasons: Secured Area

Bldg. 125, TA–55
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020018
Status: Unutilized
Reasons: Secured Area

Bldg. 162, TA–55
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020019
Status: Unutilized
Reasons: Secured Area

Bldg. 22, TA–33
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy

Property Number: 41200020022
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Unsuitable Properties

Building

New Mexico

Bldg. 23, TA–49
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020023
Status: Unutilized
Reasons: Secured Area

Bldg. 37, TA–53
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020024
Status: Unutilized
Reasons: Secured Area

Bldg. 121, TA–49
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020025
Status: Unutilized
Reasons: Secured Area

Bldg. B117
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117
Landholding Agency: Energy
Property Number: 41200220032
Status: Excess
Reasons: Extensive deterioration

Unsuitable Properties

Building

New Mexico

Bldg. B118
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117
Landholding Agency: Energy
Property Number: 41200220033
Status: Excess
Reasons: Extensive deterioration

Bldg. B119
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117
Landholding Agency: Energy
Property Number: 41200220034
Status: Excess
Reasons: Extensive deterioration

Bldg. 2, TA–11
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200240004
Status: Unutilized
Reasons: Secured Area

Bldg. 4, TA–41
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200240005
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

New Mexico

Bldg. 116, TA–21
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200310003
Status: Unutilized
Reasons: Secured Area

Bldgs. 1, 2, 3, 4, 5, TA–28
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200310004
Status: Unutilized
Reasons: Secured Area

Bldgs. 447, 1483
Los Alamos Natl Laboratory
Los Alamos NM
Landholding Agency: Energy
Property Number: 41200410002
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. 99650
Sandia National Laboratory
Albuquerque Co: Bernalillo NM 87185
Landholding Agency: Energy
Property Number: 41200510004
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

New Mexico

Bldgs. 807, 6017 CAMU2&CAMU3
Sandia Natl Laboratories
Albuquerque NM 87185
Landholding Agency: Energy
Property Number: 41200730001
Status: Unutilized
Reasons: Secured Area

Bldg. 6502
Sandia National Lab
Albuquerque NM 87185
Landholding Agency: Energy
Property Number: 41200810002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

New York

Bldgs. 0087, 0100
Brookhaven Natl Laboratory
Upton NY 11973
Landholding Agency: Energy
Property Number: 41200720002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Unsuitable Properties

Building

New York

Bldgs. 0134A, 0179A
Brookhaven Natl Laboratory
Upton NY 11973
Landholding Agency: Energy
Property Number: 41200720003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Bldgs. 0210, 0211
Brookhaven Natl Laboratory
Upton NY 11973
Landholding Agency: Energy
Property Number: 41200720004
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Bldgs. 0475, 0481
Brookhaven Natl Laboratory
Upton NY 11973
Landholding Agency: Energy
Property Number: 41200720005
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Unsuitable Properties

Building

New York

Bldgs. 0629, 0952
Brookhaven Natl Laboratory
Upton NY 11973
Landholding Agency: Energy
Property Number: 41200720006
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 0096
Brookhaven National Lab
Upton NY 11973
Landholding Agency: Energy
Property Number: 41200730004
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. 0491, 0650
Brookhaven Natl Lab
Upton Co: Suffok NY 11973
Landholding Agency: Energy
Property Number: 41200810003
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

New York

Bldgs. 0810, 0811, 0901W
Brookhaven Natl Lab
Upton Co: Suffolk NY 11973
Landholding Agency: Energy
Property Number: 41200810004
Status: Excess
Reasons: Secured Area

North Dakota

Bldgs. 1612, 1741
Grand Forks AFB
Grand Forks ND 58205
Landholding Agency: Air Force
Property Number: 18200720023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Oregon

Bldg. 1001
ANG Base
Portland OR 97218
Landholding Agency: Air Force
Property Number: 18200820018
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Unsuitable Properties

Building

Pennsylvania

Z-Bldg.

Bettis Atomic Power Lab
West Mifflin Co: Allegheny PA 15122–0109
Landholding Agency: Energy
Property Number: 41199720002
Status: Excess
Reasons: Extensive deterioration

South Carolina

Bldgs. 19, 20, 23
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200730009
Status: Underutilized
Reasons: Secured Area

Bldgs. 27, 28, 29
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200730010
Status: Underutilized
Reasons: Secured Area

Bldgs. 30, 39
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200730011
Status: Underutilized
Reasons: Secured Area

Unsuitable Properties

Building

South Carolina

Bldg. 701–6G
Jackson Barricade
Jackson SC
Landholding Agency: Energy
Property Number: 41200420010
Status: Unutilized
Reasons: Secured Area

Bldg. 211–000F
Nuclear Materials Processing Facility
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200420011
Status: Excess
Reasons: Secured Area

Bldg. 221–001F
Nuclear Materials Processing Facility
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200420015
Status: Excess
Reasons: Secured Area

Bldg. 190–K
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200420030
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

South Carolina

Bldg. 710–015N
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430002
Status: Excess
Reasons: Secured Area

Bldg. 713–000N
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430003
Status: Excess
Reasons: Secured Area

Bldgs. 80–9G, 10G
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430006
Status: Excess
Reasons: Secured Area

Bldgs. 105–P, 105–R
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430007
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

South Carolina

Bldg. 183–003L
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430009
Status: Excess
Reasons: Secured Area

Bldg. 221–016F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430014
Status: Excess
Reasons: Secured Area

Bldgs. 221–053F, 054F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430016
Status: Excess
Reasons: Secured Area

Bldgs. 252–003F, 005F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430017
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

South Carolina

Bldg. 315–M
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430030
Status: Excess
Reasons: Secured Area

Bldg. 716–002A
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430040
Status: Excess
Reasons: Secured Area

Bldgs. 221–21F, 22F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430042
Status: Excess
Reasons: Secured Area

Bldg. 221–033F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430043
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

South Carolina

Bldg. 254–007F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430044
Status: Excess
Reasons: Secured Area

Bldg. 281–001F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430045
Status: Excess
Reasons: Secured Area

Bldg. 281–004F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430046
Status: Excess
Reasons: Secured Area

Bldg. 281–006F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430047
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

South Carolina

Bldg. 703–045A
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430050
Status: Excess
Reasons: Secured Area

Bldg. 703–071A
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430051
Status: Excess
Reasons: Secured Area

Bldg. 754–008A
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430058
Status: Excess
Reasons: Secured Area

Bldg. 186–R
Savannah River Site
Aiken SC
Landholding Agency: Energy
Property Number: 41200430063
Status: Unutilized

Reasons: Secured Area

Unsuitable Properties

Building

South Carolina

4 Bldgs.
Savannah River Site
#281–2F, 281–5F, 285–F, 285–5F
Aiken SC
Landholding Agency: Energy
Property Number: 41200430066
Status: Unutilized
Reasons: Secured Area

Bldg. 701–000M
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430084
Status: Unutilized
Reasons: Secured Area

Bldg. 690–000N
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200440032
Status: Underutilized
Reasons: Secured Area

Facility 701–5G
Savannah River Site
New Ellenton SC
Landholding Agency: Energy
Property Number: 41200530003
Status: Unutilized
Reasons: Extensive deterioration

Unsuitable Properties

Building

South Carolina

Bldg. 714–000A
Savannah River Site
Aiken SC
Landholding Agency: Energy
Property Number: 41200620014
Status: Underutilized
Reasons: Secured Area

Bldg. 777–018A
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200620022
Status: Excess
Reasons: Secured Area

Bldgs. 108–1P, 108–2P
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200630007
Status: Unutilized
Reasons: Secured Area

Bldg. 701–001P
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200640002
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

South Carolina

Bldgs. 151–1P, 151–2P
Savannah River site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200640004
Status: Unutilized
Reasons: Secured Area

Bldg. 191–P
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200640005
Status: Unutilized
Reasons: Secured Area

Bldg. 710–P
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200640006
Status: Unutilized
Reasons: Secured Area

Bldg. 614–63G
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200710006
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

South Carolina

Bldgs. 701–2G, –905–117G
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200710007
Status: Unutilized
Reasons: Secured Area

Bldgs. 108–1R, 108–2R
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200710010
Status: Unutilized
Reasons: Secured Area

Bldgs. 717–003S, 717–010S
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200710011
Status: Unutilized
Reasons: Secured Area

Facility 151–1R
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200810001
Status: Underutilized
Reasons: Secured Area

Unsuitable Properties

Building

South Dakota

Bldg. 2306
Ellsworth AFB
Meade SD 57706
Landholding Agency: Air Force
Property Number: 18200740008
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Tennessee

Bldg. 9418–1
Y–12 Plant
Oak Ridge Co: Anderson TN 37831
Landholding Agency: Energy
Property Number: 41199810026
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Bldg. 2010
Oak Ridge Natl Laboratory
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200710009
Status: Excess
Reasons: Secured Area Extensive deterioration

Unsuitable Properties

Building

Tennessee

3 Bldgs.
Y–12 Natl Nuclear Security Complex
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200720001
Status: Unutilized
Directions: 9104–01, 9104–02, 9104–03
Reasons: Secured Area

Bldgs. 1035, 1058, 1061
E. Tennessee Technology Park
Oak Ridge TN
Landholding Agency: Energy
Property Number: 41200730002
Status: Unutilized
Reasons: Extensive deterioration, Secured Area, Contamination

Bldgs. 1231, 1416
E. Tennessee Technology Park
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200730003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration, Contamination

Unsuitable Properties

Building

Tennessee

Bldgs. 413, 1059
E. TN Tech Park
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200730006
Status: Excess
Reasons: Secured Area, Contamination

Bldgs. 1000, 1008F, 1028
E. TN Technology Park
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810005
Status: Excess
Reasons: Secured Area

Bldgs. 1101, 1201, 1501
E. TN Technology Park
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810006
Status: Excess
Reasons: Secured Area, Within airport runway clear zone

Unsuitable Properties

Building

Tennessee

4 Bldgs.

East TN Technology Park
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810007
Status: Excess
Directions: 1513, 1515, 1515E, 1515H
Reasons: Secured Area

3 Bldgs.
Y–12 National Security Complex
9706–01, 9706–01A, 9711–05
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810008
Status: Unutilized
Reasons: Secured Area

3 Bldgs.
Y–12 National Security Complex
9733–01, 9733–02, 9733–03
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810009
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

Tennessee

Bldgs. 9734, 9739
Y–12 National Security Complex
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810010
Status: Unutilized
Reasons: Secured Area

Texas

Bldg. 1001
FNXC, Dyess AFB
Tye Co: Taylor TX 79563
Landholding Agency: Air Force
Property Number: 18200810008
Status: Unutilized
Reasons: Extensive deterioration

Zone 12, Bldg. 12–20
Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200220053
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Unsuitable Properties

Building

Texas

Bldgs. 12–017E, 12–019E
Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200320010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

4 Bldgs.
NNSA Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200540002
Status: Unutilized
Directions: 12–009, 12–009A, 12–R–009A, 12–R–009B
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 12–011A
NNSA Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200540003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Unsuitable Properties

Building

Texas

Bldg. 12–097
NNSA Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200540004
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 11–54, 11–54A
Zone 11
Plantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200630008
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 12–002B
Zone 12
Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200630009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Unsuitable Properties

Building

Texas

4 Bldgs.
12–003, 12–R–003, 12–003L
Zone 12, Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200630010
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 12–014
Zone 12
Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200630011
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 12–24E
Zone 12
Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200630012
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Unsuitable Properties

Building

Texas

Bldg. 11–029, Zone 11
Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200640007
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 11–010, T09–031
Pantex Plant
Amarillo TX 79120
Landholding Agency: Energy
Property Number: 41200810011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Washington

79 Structures
Hanford Site 100, 300, 400
Richland Co: Benton WA 99352
Landholding Agency: Energy
Property Number: 41200620010
Status: Excess
Directions: Infrastructure Facilities
Reasons: Secured Area

Unsuitable Properties

Building

Washington

87 Structures
Hanford Site 100, 300, 400
Richland Co: Benton WA 99351
Landholding Agency: Energy
Property Number: 41200620011
Status: Excess
Directions: Mobile Offices
Reasons: Secured Area

139 Structures
Hanford Site 100, 300, 400
Richland Co: Benton WA 99352
Landholding Agency: Energy
Property Number: 41200620012
Status: Excess
Directions: Offices Facilities
Reasons: Secured Area

122 Structures
Hanford Site 100, 300, 400
Richland Co: Benton WA 99352
Landholding Agency: Energy
Property Number: 41200620013
Status: Excess
Directions: Process Facilities
Reasons: Secured Area

Unsuitable Properties

Building

Wyoming

Bldg. 00012
Cheyenne RAP
Laramie WY 82009
Landholding Agency: Air Force
Property Number: 18200730013
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material Extensive deterioration

Land

California

Facilities 99001 thru 99006
Pt Arena AF Station
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820028
Status: Excess
Reasons: Secured Area

7 Facilities
Pt. Arena Comm Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820031
Status: Excess
Directions: 99001, 99003, 99004, 99005, 99006, 99007, 99008
Reasons: Secured Area

Unsuitable Properties

Land

California

Facilities 99002 thru 99014
Pt. Arena Water Sys Annex
Mendocino CA 95468
Landholding Agency: Air Force
Property Number: 18200820032
Status: Excess
Reasons: Secured Area

Florida

Defense Fuel Supply Point
Lynn Haven FL 32444
Landing Agency: Air Force
Property Number: 18200740009
Status: Excess
Reasons: Floodway

[FR Doc. E8–23007 Filed 10–2–08; 8:45 am]

BILLING CODE 4210–67–P

Federal Register

Friday,
October 3, 2008

Part III

Federal Communications Commission

47 CFR Parts 27 and 90

Service Rules for the 698–746, 747–762 and 777–792 MHz Bands, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 27 and 90

[WT Docket No. 06–150; PS Docket No. 06–229; FCC 08–230]

Service Rules for the 698–746, 747–762 and 777–792 MHz Bands, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on its tentative conclusions and proposals on how the Commission might modify its rules governing the public/private partnership, the D Block licensee, and the public safety broadband licensee. This Third Further Notice of Proposed Rulemaking (Third FNPRM) seeks comment on its tentative conclusion that it should continue to mandate a public/private partnership between the D block licensee and the public safety broadband licensee on a number of proposals and tentative conclusions regarding the terms and conditions for the partnership.

DATES: Written comments are due on or before November 3, 2008, and reply comments are due on or before November 12, 2008.

ADDRESSES: You may submit comments, identified by WT Docket No. 06–150 and PS Docket No. 06–229, by any of the identified methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the Commission to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Peter Trachtenberg at (202) 418–7369, at *peter.trachtenberg@fcc.gov*, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau; Jeffrey S. Cohen at (202) 418–0799, *jeff.cohen@fcc.gov*, Public Safety and Homeland Security Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third FNPRM*, WT Docket No. 06–150, PS Docket No. 06–229, adopted on September 25, 2008 and released September 25, 2008. The full text of the *Third FNPRM* is available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com*; or by calling (800) 378–3160, facsimile (202) 488–5563, or e-mail *FCC@BCPIWEB.com*. Copies of the public notice also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket numbers, WT Docket No. 06–150 and PS Docket No. 06–229. Additionally, the complete item is available on the Federal Communications Commission's Web site at *http://www.fcc.gov*.

Synopsis

In the *Second Report and Order,* 72 FR 48814, August 24, 2007, the Commission adopted rules for the establishment of a mandatory public/private partnership (the 700 MHz Public/Private Partnership) in the upper portions of the 698–806 MHz band (700 MHz Band) as the means for promoting the rapid construction and deployment of a nationwide, interoperable broadband public safety network that would serve public safety and homeland security needs. Specifically, the Commission required that the winning bidder of the commercial license in the Upper 700 MHz D Block (758–763/788–793 MHz) (D Block) enter into the 700 MHz Public/Private Partnership with the nationwide licensee of the public safety broadband spectrum (763–768/793–798 MHz) (Public Safety Broadband Licensee) to enable construction of this interoperable broadband network, which would span both the commercial D Block and public safety spectrum. In the recently concluded auction of commercial 700 MHz licenses, bidding for the D Block license did not meet the applicable reserve price of $1.33 billion and, pursuant to the Commission's rules, there was no winning bid for that license. In the *Second Further Notice of Proposed Rulemaking,* 22 FCC Rcd 8047 (2008) (*Second FNPRM*), the Commission revisited its decisions concerning the 700 MHz Public/Private Partnership, including revisions to this partnership as well as alternative rules the Commission should adopt in the event the D Block licensee is no longer required to enter into a mandatory public/private partnership.

In the *Third FNPRM,* the Commission seeks comment on the tentative conclusions and proposals presented in this *Third FNPRM,* and on whether these proposals will lead to a successful auction and, more importantly, a successful partnership or partnerships that will fulfill the Commission's goal of making interoperable broadband wireless service available to public safety entities across the nation. The Commission tentatively concludes that it should continue to require that the D Block licensee enter into a public/private partnership with the Public Safety Broadband Licensee, and proposes to use competitive bidding to resolve two critical issues: (1) The appropriate geographic license area for the D Block, and (2) the need for a common broadband technology platform nationwide. The Commission also proposes significant clarifications and revisions of the parties' obligations regarding the construction and operation of the shared wireless broadband network as well as modifications to certain rules governing the establishment of the Network Sharing Agreement and the licensing of the D Block following bidding for D Block licenses. The Commission also addresses certain additional issues related to the auction process and the rules governing public safety users and the Public Safety Broadband Licensee, including narrowband relocation issues. This *Third FNPRM* is another step in the Commission's ongoing efforts to develop a regulatory framework that will address current and future public safety communications needs.

Discussion

I. Introduction

1. In this Third Further Notice of Proposed Rulemaking (*Third FNPRM*), the Commission takes the next step toward achieving the goal of a nationwide interoperable broadband wireless network for public safety entities. The Commission previously sought to achieve this goal through an innovative public/private partnership,

which required the winning bidder of the commercial license in the Upper 700 MHz D Block (758–763/788–793 MHz) (D Block) to partner with the nationwide licensee of the public safety broadband spectrum (763–768/793–798 MHz) (Public Safety Broadband Licensee or PSBL) to enable construction of an interoperable broadband network that would serve both commercial and public safety users.[1] Because the auction of the D Block did not result in a winning bid, the Commission issued the *Second FNPRM* revisiting the rules governing the mandatory public/private partnership, the D Block licensee, and the Public Safety Broadband Licensee, seeking comment broadly on how the Commission might modify those rules to achieve the Commission goals, whether the Commission should continue to mandate a public/private partnership between the D Block licensee and Public Safety Broadband Licensee, and if so, under what terms and conditions.[2] The Commission further indicated that, prior to adopting final rules, the Commission would present for public comment a detailed proposal regarding specific proposed rules to address these issues.[3] In this Third FNPRM, the Commission now offers and seeks comment on the following proposals and tentative conclusions.

2. As an initial matter, the Commission tentatively concludes that it should continue to require, as a license condition, that the D Block licensee enter into a public/private partnership with the Public Safety Broadband Licensee for the purpose of constructing a wireless broadband network that will operate over both D Block spectrum and public safety broadband spectrum and provide broadband services to both commercial users and public safety entities (shared wireless broadband network).[4] The Commission finds that a public/private partnership condition on the D Block remains the best option to achieve nationwide build-out of an interoperable broadband network for public safety entities, given the current absence of legislative appropriations for this purpose and the limited funding available to the public safety sector. The Commission also proposes to retain those current rules that will support this relationship. For example, the Commission proposes to continue requiring the parties to enter into a Network Sharing Agreement (NSA), and to make the NSA a condition of the grant of the D Block license(s). The Commission also proposes, however, to clarify and revise the rules to clearly establish the obligations of the parties to the partnership with greater specificity and detail. These clarifications and revisions address whether the D Block will be licensed on a nationwide or regional basis, the obligations of the parties regarding the construction and operation of the shared wireless broadband network, the rules governing the process for establishing an NSA between the parties, certain auction issues, and issues related to public safety users and the Public Safety Broadband Licensee. The Commission anticipates that, by establishing the rules governing the public/private partnership in a more comprehensive and detailed fashion, the Commission will enhance the certainty of bidders regarding their potential obligations as D Block licensees, and facilitate the rapid and successful negotiation of NSAs as the Commission would be significantly reducing the scope of issues that need to be negotiated.[5] Equally important, the Commission seeks in its proposals to meet the needs of the public safety community in a commercially viable manner. With these goals in mind, the Commission makes the following proposals.

3. First, the Commission tentatively concludes that it should resolve two critical issues through the use of competitive bidding: (1) The appropriate geographic license area for the D Block, and (2) the need for a common broadband technology platform nationwide. The Commission tentatively concludes that it can resolve these issues through competitive bidding by offering alternative sets of D Block licenses with different license areas and broadband technology conditions. With regard to the appropriate geographic area, the Commission proposes to offer the D Block both as a single nationwide license and on a regional basis, using geographic areas that the Commission will refer to as Public Safety Regions (PSRs). PSRs would be comprised of fifty-five regions that mirror the geographic boundaries of the fifty-five 700 MHz Regional Planning Committee (RPC) regions, and three additional areas (for a total of 58 PSRs) to cover the whole country and match the geographic area of the nationwide license.[6] With regard to the broadband technology platform, the Commission proposes to establish rules that will ensure that a single broadband air interface is used nationwide regardless of whether there is a single licensee or multiple regional licensees, to ensure that public safety users may communicate when they roam outside their home regions.

4. To resolve both of these issues, the Commission therefore proposes to offer simultaneously three alternative sets of licenses that vary by geographic license area and by conditions regarding the technology platform that must be used by the licensee(s). Specifically, under this proposal, the Commission would offer (1) a single license for service nationwide with the technology platform to be determined by the licensee; (2) a nationwide set of PSR licenses conditioned on the use of Long Term Evolution (LTE) by the licensees; and (3) a nationwide set of PSR licenses conditioned on the use of Worldwide Interoperability for Microwave Access (WiMAX) by the licensees. The Commission will then award the D Block license(s) in the set that receives bids on licenses covering the greatest aggregate population, subject to the requirement that the license(s) must

[1] *See* Service Rules for the 698–746, 747–762 and 777–792 MHz Bands, WT Docket No. 06–150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01–309, Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03–264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06–169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06–229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96–86, Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule, WT Docket No. 07–166, *Second Report and Order,* 22 FCC Rcd 15289 (2007) (*Second Report and Order*) *recon. pending.*

[2] *See* Service Rules for the 698–746, 747–762 and 777–792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06–150, PS Docket No. 06–229, 22 FCC Rcd 8047 (2008) (*Second FNPRM*).

[3] *See id.* at 8052 para. 7.

[4] Under the Commission proposal, it is possible that there will be multiple regional D Block licenses or a single nationwide D Block license. Accordingly, references herein to ''the'' D Block license and licensee should be understood to incorporate reference to any of multiple D Block licenses or licensees, as appropriate. The Commission proposed rules should be interpreted in similar fashion.

[5] The Commission has appended an NSA term sheet, which provides a summary of major terms that the parties must include in their agreement(s). *See, supra,* Appendix D.

[6] The three additional regions will cover (1) the Gulf of Mexico; (2) the Territory of Guam (Guam) and the Commonwealth of Northern Mariana Islands (Northern Mariana Islands); and (3) the Territory of American Samoa (American Samoa), and will be identical to the current Economic Area (EA) licensing areas for those same regions. *See* Appendix A.

authorize service in areas covering at least half of the nation's population. If more than one set of licenses meeting these requirements cover the same population, the Commission will award the D Block licenses in the set that receives the highest aggregate gross bid. The Commission also proposes to establish auction procedures that will encourage bidding on licenses covering as much population as possible, including procedures to reduce minimum opening bids on unsold regional licenses during bidding under circumstances the Commission specifically describes below. The Commission also tentatively concludes that package bidding on licenses in the regional sets would serve the public interest and that it should direct the Wireless Telecommunications Bureau to propose and implement detailed package bidding procedures prior to bidding. The Commission tentatively concludes that this method of assigning D Block licenses will be most likely to result in the successful development of a nationwide interoperable broadband network for public safety use, and provides a better means of addressing these issues than by specifying a single geographic licensing area or broadband technology in advance of competitive bidding. At the same time, it will provide all interested bidders with the necessary certainty at the time they make their bids of what conditions will be applicable to them should their bids be successful.

5. The Commission proposes significant clarifications and revisions of the parties' obligations regarding the construction and operation of the shared wireless broadband network. These clarifications and revisions address (1) the use of spectrum in the shared wireless broadband network, including requirements regarding public safety priority access to commercial capacity in emergencies; (2) the technical requirements of the shared wireless broadband network; (3) the performance requirements of the D Block licensee(s); and (4) the respective operational roles of the D Block licensee(s) and the Public Safety Broadband Licensee. With regard to spectrum use, the Commission first tentatively concludes that a D Block licensee may construct and operate its shared wireless broadband network using the entire 20 megahertz of D Block spectrum and public safety broadband spectrum as a combined, blended resource. Under this proposal, public safety users will still be guaranteed unconditionally preemptive access to 10 megahertz of capacity at all times, but the shared wireless broadband network may flexibly and dynamically assign frequencies from either the D Block or public safety spectrum to provide that capacity. Second, the Commission proposes to revise the rules governing public safety priority access to D Block spectrum capacity in emergencies. The Commission proposed revisions include: (1) Specifying in detail the circumstances that trigger public safety priority access to commercial spectrum capacity; (2) providing that, in this context, ''priority access'' means only that a public safety user would be assigned the next available channel within the commercial spectrum over a commercial user, and does not include a right to preempt any ongoing commercial calls being carried over commercial spectrum capacity; (3) limiting the additional capacity that must be provided to public safety users in emergencies to a specified percentage of the D Block spectrum capacity; (4) requiring that public safety priority access to D Block spectrum capacity be limited to the time and geographic scope affected by the emergency; and (5) specifying the procedures for requesting and obtaining such access. Third, the Commission tentatively concludes that the current rules for commercial access to public safety spectrum should remain the same subject to the Commission's clarification regarding blended use. Thus, the Commission proposes that commercial users will have secondary access to public safety's 10 megahertz of spectrum capacity subject to unconditional and immediate preemption when the spectrum capacity is needed by public safety users. Fourth, the Commission finds that the Commission tentative proposals regarding spectrum use are consistent with the requirements of Section 337 of the Communications Act, as amended.

6. With regard to the technical requirements of the network, in addition to the Commission's proposal regarding the broadband technology platform, it makes detailed proposals regarding (1) interoperability and public safety roaming; (2) availability, robustness, and hardening of the network; (3) capacity, throughput, and quality of service; (4) security and encryption; (5) power limits, power flux density limits, and related notification and coordination requirements; and (6) ensuring the availability of a satellite-capable handset.

7. With regard to the D Block license term and performance requirements, the Commission proposes to extend the license term to fifteen years and to adopt performance benchmarks applicable at the fourth, tenth, and fifteenth years following the license grant date. For the first two benchmarks, the Commission proposes to require D Block licensees to provide signal coverage and offer service to at least 40 percent of the population in each PSR by the end of the fourth year, and at least 75 percent by the end of the tenth year. For the final benchmark at the fifteenth year, the Commission proposes to adopt a ''tiered'' approach, applying one of three different population coverage requirements depending on the population density of the PSR: (1) For PSRs with an average population density of less than 100 people per square mile, the licensee would be required to provide signal coverage and offer service to at least 90 percent of the population within that PSR; (2) for PSRs with an average population density of at least 100 people per square mile and less than 500 people per square mile, the licensee would be required to provide signal coverage and offer service to at least 94 percent of the population within that PSR; and (3) for PSRs with an average population density of at least 500 people per square mile, the licensee would be required to provide signal coverage and offer service to at least 98 percent of the population within that PSR.

8. The Commission also proposes modifications to certain rules governing the establishment of the Network Sharing Agreement and the licensing of the D Block following bidding for D Block licenses, in order to increase the likelihood of successful, rapid deployment of the shared wireless broadband network. First, the Commission tentatively proposes that it shall be able to offer any D Block license to a second highest bidder in the event that the original winning bidder is not assigned the license, either due to a failure to enter into an NSA or for any reason. Second, the Commission tentatively concludes that a winning bidder for a D Block license that is otherwise qualified will be liable for default payments only if it chooses not to execute a Commission-approved NSA. Thus, an otherwise-qualified winning bidder for a D Block license will not be liable for default payments if the lack of a Commission-approved NSA results from any other party's failure to execute the agreement or a Commission determination that there is no acceptable resolution to a dispute regarding terms to be included in the agreement. Finally, given the Commission decision to offer alternative D Block licenses by auction, the Commission tentatively concludes that it should adopt a D Block-specific rule regarding the amount of additional

payments owed by any defaulting bidder. The Commission proposes a rule equivalent to the Commission's standard rule with respect to non-package bidding auctions, *i.e.*, that the Commission will provide that the additional payment will be between 3 and 20 percent of the applicable bid.

9. The Commission also addresses certain additional issues related to the auction process. In particular, in order to further facilitate applications from potentially qualified parties, the Commission tentatively concludes that it will not restrict the eligibility to bid of any party that may qualify to hold a D Block license and that no reserve price beyond the minimum opening bid(s) will apply. Furthermore, given the oversight that already applies to the D Block, the Commission will codify an existing exception to the Commission's designated entity eligibility rules with respect to the spectrum capacity of D Block licenses, so that a designated entity applicant or licensee with lease or resale (including wholesale) arrangement(s) for more than 50% of the spectrum capacity of any D Block license will not on that basis alone lose its eligibility for designated entity benefits.[7]

10. The Commission also makes a number of tentative conclusions and proposals with regard to the rules governing public safety users and the Public Safety Broadband Licensee. The Commission tentatively concludes that eligible users of the public safety broadband spectrum capacity must be providers of ''public safety services'' as defined in the Act.[8] The Commission also proposes to reaffirm the Commission prior decision to grant the Public Safety Broadband Licensee sole discretion regarding whether to permit Federal public safety agency use of the public safety broadband spectrum capacity. Further, the Commission tentatively concludes not to require eligible public safety users to subscribe to the shared broadband network.

11. With respect to the Public Safety Broadband Licensee, the Commission tentatively concludes that it should remain a non-profit entity, and proposes certain restrictions on its business relationships to avoid the potential for conflicts of interest. Specifically, the Commission proposes that an entity serving as an advisor, agent, or manager of the Public Safety Broadband Licensee will be ineligible to become a D Block licensee unless such entity completely severs its business relationship with the Public Safety Broadband Licensee no later than thirty days following release of an oder adopting final rules in this proceeding. Further, the Commission proposes to prohibit advisors, agents, or managers of the Public Safety Broadband Licensee from establishing business relationships with third party entities having a financial interest in the decisions of the Public Safety Broadband Licensee.

12. With respect to the mechanism of funding the Public Safety Broadband Licensee, the Commission tentatively concludes that the nationwide D Block licensee or, if the D Block is licensed on a regional basis, each regional D Block licensee, will make an annual payment to the Public Safety Broadband Licensee, which would constitute the sole allowable source of funding for the Public Safety Broadband Licensee's annual operating and administrative costs. The Commission further tentatively concludes that the Public Safety Broadband Licensee must establish an audited annual budgeting process, and must submit its proposed annual budget to the Commission for approval. The Commission also reserves the right to request an audit of the Public Safety Broadband Licensee's expenses at any time. The Commission further tentatively concludes that it should establish fixed nationwide service fees that the D Block licensee may charge to public safety users based on a discounted rate schedule.

13. The Commission proposes several changes to the Public Safety Broadband Licensee's articles of incorporation and by-laws. Specifically, the Commission proposes replacing the Public Safety Broadband Licensee board of directors position currently held by the National Emergency Management Association (NEMA) with the National Regional Planning Council (NRPC). The Commission also tentatively concludes that the positions of Chairman of the Board and Chief Executive Officer must be filled by separate individuals; that the Public Safety Spectrum Trust Corporation (PSST) may not hire a new individual to fill the CEO position until the D Block licensee(s) has made funding available to the PSST for its administrative and operational costs; and that any individual appointed as CEO cannot have served on the Public Safety Broadband Licensee executive committee during the period three years prior to his or her appointment as CEO. The Commission also tentatively concludes that the PSST board should elect a new executive committee with proposed new conditions on term limits, consecutive terms, and committee size. Further, the Commission tentatively concludes that it will require three-fourths supermajority voting on all major decisions by the board, that board meetings be open to the public (with some exceptions), that the minutes of each board meeting must be made publicly available (again with some exceptions), and several other conditions. The Commission tentatively declines to rescind the present PSST's license and reissue the license to a new licensee.

14. In relation to narrowband relocation issues, the Commission tentatively concludes that the Commission will extend the current February 17, 2009 deadline for completing such relocation twelve months from the date upon which narrowband relocation funding is made available by the D Block licensee(s). The Commission also proposes that the current $10 million cap on narrowband relocation costs should be increased to $27 million. The Commission also tentatively concludes that the existing August 30, 2007 cut-off date for narrowband deployments outside of the consolidated narrowband spectrum should not be changed, and propose conditions under which waiver relief may be granted for deployment of narrowband equipment beyond that date.

15. The Commission seeks comment on all of the tentative conclusions and proposals presented in this Third FNPRM, and on whether these proposals will lead to a successful auction and, more importantly, a successful partnership or partnerships that will fulfill the Commission's goal of making interoperable broadband wireless service available to public safety entities across the Nation.

II. Background

16. In this section, the Commission reviews the history of its efforts to establish a public/private partnership to address the need for nationwide interoperable public safety communications and to promote public safety access to advanced broadband communication systems and technologies. The Commission first describes the rules it promulgated in the *Second Report and Order,* which established two nationwide 700 MHz licenses, the Public Safety Broadband License and the commercial D Block license, and required the licensees to

[7] Because this exception does not extend to arrangements for use of the spectrum capacity of licenses *other than* the D Block license, if an applicant or licensee has an impermissible material relationship with respect to the spectrum capacity of any other license(s), the normal operation of the Commission's rules will continue to render it ineligible for designated entity benefits for the D Block license.

[8] *See* 47 U.S.C. 337(f)(1).

enter into a public/private partnership for the purpose of constructing and operating a nationwide wireless broadband network meeting specified terms. The Commission reviews petitions for reconsideration of the *Second Report and Order* that raised issues related to this proceeding. The Commission briefly discusses Auction 73, the auction of commercial 700 MHz licenses concluded earlier this year in which the Commission auctioned the D Block under the public/private partnership rules but did not receive a winning bid. Finally, the Commission summarizes the *Second FNPRM,* which commenced the process of revisiting and reconsidering the public/private partnership rules that the Commission continues now in the present Third FNPRM.

A. 700 MHz Second Report and Order

17. The commercial and public safety spectrum bands at issue in this proceeding are part of the 700 MHz Band (698–806 MHz), which is currently occupied by television broadcasters, but which must be cleared of such transmissions and made available for wireless services by February 17, 2009, as part of the digital television (DTV) transition.[9] Pursuant to Congress's direction in the Balanced Budget Act of 1997 (Balanced Budget Act), codified at section 337(a) of the Act, the Commission has allocated, in the Upper 700 MHz Band (746–806 MHz), 24 megahertz of spectrum for public safety services and 36 megahertz for commercial services.[10]

18. In the *Second Report and Order,* the Commission established, among other rules regarding the 700 MHz Band, rules for the 700 MHz public safety spectrum and one block of the Upper 700 MHz commercial spectrum that would promote the creation of a nationwide, interoperable broadband public safety network. With regard to the public safety spectrum, the Commission designated the lower half of the spectrum (the 763–768 MHz and 793–798 MHz bands) for public safety broadband communications, and consolidated existing narrowband allocations, previously located in both the lower and upper ends of the public safety spectrum, in the upper half of the spectrum (the 769–775 MHz and 799–805 MHz bands) exclusively.[11] The Commission also created a single nationwide license for the public safety broadband spectrum, the Public Safety Broadband License, and the Commission specified the criteria, selection process, and responsibilities of the licensee assigned this spectrum, including a requirement that the licensee must be a non-profit organization.[12]

19. With regard to the commercial spectrum in the 700 MHz Band, and as described in greater detail below, the Commission created a nationwide license in the D Block (the 758–763 MHz and 788–793 MHz bands, located adjacent to the public safety broadband spectrum), and required the D Block licensee, working with the Public Safety Broadband Licensee in a public/private partnership (the 700 MHz Public/Private Partnership) and using the spectrum associated with both licenses, to construct and operate a nationwide network that would be shared by commercial and public safety users.[13]

20. *700 MHz Public/Private Partnership.* The Commission mandated the 700 MHz Public/Private Partnership between two nationwide licensees to promote the rapid deployment of a nationwide, interoperable, broadband public safety network that was robust, cost effective, spectrally efficient, and based on a flexible IP-based, modern architecture.[14] The Commission found that nationwide licensing would best serve these goals by centralizing the responsibilities for implementing and administering a broadband network across the entire country, creating economies of scale, and avoiding a fragmented approach to network construction. The Commission further determined that the public/private partnership, by promoting commercial investment in the build-out of a shared network infrastructure for both commercial and public safety users, would address ''the most significant obstacle to constructing a public safety network—the limited availability of public funding.'' [15] The Commission concluded that providing for a shared infrastructure using the D Block and the public safety broadband spectrum would help achieve significant cost efficiencies. The Commission noted that this would allow public safety agencies ''to take advantage of commercial, off-the-shelf technology and otherwise benefit from commercial carriers' investments in research and development of advanced wireless technologies.'' [16] The Commission stated that this approach would also benefit the public safety community by providing it with access to an additional 10 megahertz of broadband spectrum during emergencies.[17] Most importantly, the Commission anticipated that this particular public/private partnership approach would provide all of these public safety benefits on a nationwide basis.[18] The Commission noted that the 700 MHz Public/Private Partnership would also provide the D Block licensee with benefits, including the right to operate commercial services in the 10 megahertz of public safety broadband spectrum on a secondary, preemptible basis, which would both help to defray the costs of build-out and ensure that the spectrum is used efficiently.[19]

21. To ensure that the 700 MHz Public/Private Partnership would serve the needs of the public safety community and to address concerns about its success, the Commission specified certain mandatory features. First, the Commission specified requirements regarding the shared network to be constructed and the timing for that construction. In particular, the Commission established certain technical requirements for the shared network, including requirements relating to the network technology platform, signal coverage, robustness and reliability, capacity, security, operational capabilities and control, and certain equipment specifications.[20] With regard to the spectrum shared by the common network, the Commission required that the Public Safety Broadband Licensee lease the public safety broadband spectrum for commercial use by the D Block licensee on a secondary, preemptible basis, and that the public safety entities have priority access to the D Block spectrum

[9] *See* Deficit Reduction Act of 2005, Public Law No. 109–171, 120 Stat. 4 (2006).

[10] *See* Balanced Budget Act of 1997, Public Law No. 105–33, 111 Stat. 251 sec. 3004 (1997) (adding new sec. 337 of the Communications Act); Reallocation of Television Channels 60–69, the 746–806 MHz Band, ET Docket No. 97–157, *Report and Order,* 12 FCC Rcd 22953, 22955 para. 5 (1998), *recon.* 13 FCC Rcd 21578 (1998) (*Upper 700 MHz Reallocation Order*).

[11] *See Second Report and Order,* 22 FCC Rcd at 15406 para. 322. The Commission also created an internal guard band in the 768–769 MHz and 798–799 MHz bands located between the broadband and narrowband allocations. *Id.*

[12] *See Second Report and Order,* 22 FCC Rcd at 15406 para. 322.

[13] *Id.* at 15428 para. 386.

[14] *Id.* at 15420 para. 369, 15431 para. 396. *See also* Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No. 06–229, WT Docket No. 96–86, *Ninth Notice of Proposed Rulemaking,* 21 FCC Rcd 14837, 14842–43 (2006) (*700 MHz Public Safety Ninth Notice*).

[15] *Second Report and Order,* 22 FCC Rcd at 15431 para. 396.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.* at 15433–34 para. 405.

during emergencies.[21] To ensure timely construction and nationwide coverage, the Commission specified performance requirements, including three population-based build-out benchmarks requiring the D Block licensee to provide signal coverage and offer service to (1) at least 75 percent of the population of the nationwide D Block license area by the end of the fourth year after the DTV transition date, (2) at least 95 percent of the population of the nationwide license area by the end of the seventh year, and (3) at least 99.3 percent of the population of the nationwide license area by the end of the tenth year.[22]

22. Next, while finding it appropriate to establish these mandatory terms, the Commission also concluded that many details of the 700 MHz Public/Private Partnership should be left to the parties to negotiate.[23] Accordingly, the Commission established that the terms of the 700 MHz Public/Private Partnership would be governed both by Commission rules and by a Network Sharing Agreement (NSA) between the winning bidder for the D Block license and the Public Safety Broadband Licensee.[24] The Commission further provided rules governing the process by which the parties would establish the NSA, requiring among other things that negotiations begin by a date certain and conclude within six months, and providing that the D Block license application would not be granted until the parties obtained Commission approval of the agreement, executed the approved agreement, and then filed it with the Commission.[25] The Commission further specified rules to govern in the event of a negotiation dispute. Specifically, the Commission provided that if, at the end of the six month negotiation period, or on their own motion at any time, the Chiefs of the Public Safety and Homeland Security Bureau (PSHSB) and the Wireless Telecommunications Bureau (WTB) found that negotiations had reached an impasse, they could take actions including but not limited to issuing a decision on the disputed issues and requiring the submission of a draft agreement consistent with their decision.[26] The Commission also provided that if the D Block winning bidder failed to comply with the procedures the Commission established for negotiation or dispute resolution, failed to receive final Commission approval of an NSA, or failed to execute an approved NSA, it would be deemed to have defaulted on its license and would be subject to the default payments required by Section 1.2109 of the Commission rules.[27]

23. The Commission also established a number of measures to safeguard the interests of public safety on an ongoing basis after the NSA is executed. These measures included: (1) Requirements related to the organization and structure of the 700 MHz Public/Private Partnership, intended to protect the D Block license and network assets from being drawn into a bankruptcy proceeding; (2) a prohibition on discontinuance of service provided to public safety entities; (3) special remedies in the event that the D Block licensee or Public Safety Broadband Licensee fails to comply with either the Commission's rules or the terms of the NSA; (4) a special, exclusive process for resolving any disputes related to the execution of the terms of the NSA; and (5) ongoing reporting obligations.[28]

24. *Reserve Price for the Auction of the D Block.* In the *Second Report and Order*, the Commission also concluded that block-specific aggregate reserve prices should be established for each commercial license block—the A, B, C, D, and E Blocks—to be auctioned in Auction 73, and directed WTB to adopt and publicly disclose those reserve prices prior to the auction, pursuant to its existing delegated authority and consistent with the Commission directions.[29] For the D Block, the Commission concluded that WTB should consider certain factors in setting the D Block reserve price, including the 700 MHz Public/Private Partnership conditions, which might suggest a reserve price of $1.33 billion. The Commission provided that, in the event that bids for the D Block license did not meet the reserve price, the Commission would leave open the possibility of offering the license on the same terms or re-evaluating the D Block license conditions.[30]

25. *Narrowband Relocation.* As discussed above, to promote public safety access to a nationwide, interoperable broadband network, the Commission designated the lower half of the public safety spectrum for public safety broadband communications, and consolidated existing narrowband allocations, previously located in both the lower and upper ends of the public safety spectrum, in the upper half of the spectrum.[31] The Commission also shifted the entire public safety band down one megahertz, so that it would be immediately adjacent to the D Block spectrum, to further facilitate the development of a shared wireless broadband network over both D Block and public safety broadband spectrum.[32] Both the 1-megahertz shift and the narrowband consolidation, however, left certain existing public safety narrowband operations outside of the spectrum now designated for narrowband services.

26. The Commission provided in the *Second Report and Order* that all 700 MHz narrowband public safety operations outside of the newly consolidated narrowband spectrum must be relocated to that spectrum no later than the DTV transition date.[33] To effectuate the consolidation of the narrowband channels, the Commission required the D Block licensee to pay the costs of relocating narrowband radios and capped the disbursement amount for such relocation costs at $10 million.[34] The Commission also cautioned that any narrowband equipment deployed in the 764–770 MHz and 794–800 MHz bands (channels 63 and 68), or in the 775–776 MHz and 805–806 MHz bands (the upper one megahertz of channels 64 and 69), more than 30 days following the adoption date of the *Second Report and Order* would be ineligible for relocation funding.[35] In addition, the Commission prohibited authorization of any new narrowband operations in that spectrum, as of 30 days following the adoption date of the *Second Report and Order*.[36] Subsequent to the release of the *Second Report and Order*, the Commission granted limited waivers to two parties that permitted them to continue to deploy new narrowband operations outside the consolidated narrowband spectrum after August 30, 2007.[37] The Commission deferred

[21] *Id.* at 15432 para. 399, 15434–43 paras. 407–31.

[22] *Id.* at 15432 para. 399, 15433–44 paras. 403–06, 15443–46 paras. 432–43.

[23] *Id.* at 15488 para. 447.

[24] *Id.* at 15432 paras. 399–400, 15447–49 paras. 444–54.

[25] *Id.* at 15448 para. 447.

[26] *Id.* at 15465 para. 508.

[27] *Id.* at 15466 para. 511.

[28] *Id.* at 15466–71 para. 513–30.

[29] *See id.* at 15400 para. 301.

[30] *See id.* at 15404 para. 314.

[31] *See id.* at 15406 para. 322. The Commission also created an internal guard band in the 768–769 MHz and 798–799 MHz bands located between the broadband and narrowband allocations. *Id.*

[32] *See id.* at 15333 para. 111.

[33] *Id.* at 15410 para. 332.

[34] *Id.* at 15412 para. 341.

[35] *Id.* at 15412 para. 339.

[36] *Id.*

[37] *See* Implementation of a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No. 06–229, WT Docket No. 96–86, *Order*, 22 FCC Rcd 20290 (2007); Implementing a Nationwide, Broadband, Interoperable Public

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decision on other issues raised by their requests, however, including the appropriate duration of the relief and whether the parties would be entitled to reimbursement for the costs of relocating narrowband operations deployed after August 30, 2007.

B. Petitions for Reconsideration

27. Ten parties filed petitions for reconsideration seeking review of various aspects of the *Second Report and Order*.[38] Three of the petitions sought reconsideration of the rules governing the 700 MHz Public/Private Partnership specifically.[39] All three of these petitioners argued that the application of the default payment rules to the D Block winner in the event of a failure to establish an NSA should be modified, for example, by imposing such payment obligations only if the D Block winner is found to have negotiated in bad faith.[40] One petitioner also argued that network requirements should be specified more precisely for potential bidders prior to auction.[41] Conversely, another of these petitioners argued that, in some respects, the technical requirements in the rules were too specific, and that the Commission should ''not prematurely rule on specific technical issues, [and] should instead allow the [Public Safety Broadband Licensee] and D Block winner to develop those details as they negotiate the NSA * * * .'' [42]

28. Two of the ten petitioners sought reconsideration of the aggregate reserve prices set for the commercial license blocks, including the reserve price for the D Block.[43] These petitioners presented related arguments in the pre-auction process.[44] After considering the arguments, WTB established reserve prices consistent with the direction of the *Second Report and Order*, including setting a $1.33 billion reserve price for the D Block.[45]

29. Finally, two other parties filed petitions seeking reconsideration of some or all of the requirements regarding public safety narrowband relocation, as well as requests for waiver of some of these requirements.[46] The requests for waiver have since been granted in part.[47] The two petitions, however, together with the other petitions seeking reconsideration of the *Second Report and Order*, remain pending.

C. Auction 73

30. *Results of the Auction.* The auction of the D Block and other 700 MHz Band licenses, designated Auction 73, commenced on January 24, 2008, and closed on March 18, 2008.[48] While the bids for licenses associated with the other 700 MHz Band blocks offered at Auction 73 (the A, B, C, and E Blocks) exceeded the applicable aggregate reserve prices for those blocks, the nationwide D Block license received only a single bid that did not meet its reserve price of $1.33 billion and thus did not become a winning bid.[49] On March 20, 2008, the Commission determined that the Commission would not proceed immediately to re-auction the D Block license in order to provide us additional time to consider the Commission options.[50]

31. *Inspector General's Report.* On April 25, 2008, the Office of Inspector General (OIG) issued a report on its investigation of allegations that certain statements made by an advisor to the Public Safety Broadband Licensee to potential bidders for the D Block license in Auction 73, particularly those regarding the spectrum lease payments that the Public Safety Broadband Licensee would request from the D Block licensee for use of public safety spectrum, had the effect of deterring various companies from bidding on the D Block.[51] The OIG determined that the statements in question were ''not the only factor in the companies' decision not to bid on the D Block.'' Rather, it concluded that ''the uncertainties and risks associated with the D Block, including, but not limited to, the negotiation framework with [the Public Safety Broadband Licensee], the potential for default payment if negotiations failed, and the costs of the build-out and the operations of the network, taken together, deterred each of the companies from bidding on the D Block.'' [52]

D. Second Further Notice of Proposed Rulemaking

32. On May 14, 2008, to begin the process of reconsidering the appropriate rules for the D Block and the Public

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Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010; Request for Waiver of Pierce Transit, PS Docket No. 06–229, WT Docket No. 96–86, *Order*, 23 FCC Rcd 433 (PSHSB 2008).

[38] AT&T Inc. Petition for Reconsideration and Clarification, WT Docket No. 06–150; PS Docket No. 06–229 (filed Sept. 24, 2007) (AT&T Petition for Reconsideration); Blooston Rural Carriers Petition for Partial Reconsideration and/or Clarification, WT Docket No. 06–150; PS Docket No. 06–229 (filed Sept. 24, 2007) (Blooston Petition for Reconsideration); Petition for Reconsideration of the Ad Hoc Public Interest Spectrum Coalition, WT Docket No. 06–150; PS Docket No. 06–229 (filed Sept. 24, 2007) (PISC Petition for Reconsideration); Cyren Call Communications Corporation Petition for Reconsideration and for Clarification, WT Docket No. 06–150; PS Docket No. 06–229 (filed Sept. 24, 2007) (Cyren Call Petition for Reconsideration); Frontline Wireless, LLC Petition for Reconsideration (filed Sept. 24, 2007); Pierce Transit Petition for Reconsideration, WT Docket No. 06–150; PS Docket No. 06–229 (filed Sept. 24, 2007) (Pierce Transit Petition for Reconsideration); Rural Telecommunications Group, Inc. Petition for Reconsideration, WT Docket No. 06–150; PS Docket No. 06–229 (filed Sept. 24, 2007) (RTG Petition for Reconsideration); Commonwealth of Virginia Petition for Reconsideration, WT Docket No. 06–150; PS Docket No. 06–229 (filed Sept. 24, 2007) (Virginia Petition for Reconsideration); NTCH, Inc. Petition for Partial Reconsideration, WT Docket No. 06–150; PS Docket No. 06–229 (filed Sept. 21, 2007) (NTCH Petition for Reconsideration); MetroPCS Communications, Inc. Petition for Clarification and Reconsideration, WT Docket No. 06–150; PS Docket No. 06–229 (filed Sept. 20, 2007) (MetroPCS Petition for Reconsideration).

[39] *See* AT&T Petition for Reconsideration; Cyren Call Petition for Reconsideration; Frontline Petition for Reconsideration. The Frontline September 20, 2007 Request also seeks changes to the rules governing the 700 MHz Public/Private Partnership. *See* Request to Further Safeguard Public Safety Service by Frontline Wireless, WT Docket No. 06–150 (filed Sept. 20, 2007) (Frontline September 20, 2007 Request).

[40] *See* AT&T Petition for Reconsideration at 7–9; Cyren Call Petition for Reconsideration at 5–7; Frontline Petition for Reconsideration at 23–25.

[41] *See* AT&T Petition for Reconsideration at 5.

[42] *See* Frontline Petition for Reconsideration at 22. *See also* Cyren Call Petition for Reconsideration at 7.

[43] *See, generally*, Frontline Petition for Reconsideration; MetroPCS Petition for Reconsideration.

[44] *See* Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, and other Procedures for Auctions 73 and 76, *Public Notice*, 22 FCC Rcd 18141, 18194–95 paras. 197–90 (2007) (*Auction 73/76 Procedures Public Notice*).

[45] *See id.* at 18193–96 paras. 194–200.

[46] *See* Virginia Petition for Reconsideration; Pierce Transit Petition for Reconsideration.

[47] *See* Implementation of a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No. 06–229, WT Docket No. 96–86, *Order*, 22 FCC Rcd 20290 (2007); Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010; Request for Waiver of Pierce Transit, PS Docket No. 06–229, WT Docket No. 96–86, *Order*, 23 FCC Rcd 433 (PSHSB 2008).

[48] *See* Auction 73, 700 MHz Band, at *http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=73.*

[49] *See id.;* see also Auction of 700 MHz Band Licenses Closes, Public Notice, DA 08–595 (rel. Mar. 20, 2008) (700 MHz Auction Closing Public Notice). *http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=73.* Specifically, a bid of $472 million was entered by Qualcomm in Round 1 of the auction.

[50] *See* Auction of the D Block License in the 758–763 and 788–793 Bands, AU Docket No. 07–157, *Order,* 23 FCC Rcd 5421, para. 5 (2008) (*D Block Post-Auction Order*).

[51] *See Office of Inspector General Report,* from Kent R. Nilsson, Inspector General, to Chairman Kevin J. Martin (OIG rel. Apr. 25, 2008) (OIG Report).

[52] *OIG Report* at 2.

Safety Broadband License, the Commission released the *Second Further Notice of Proposed Rulemaking (Second FNPRM)*. In the *Second FNPRM*, the Commission enumerated the following goals and principles for this rulemaking proceeding:

- To facilitate public safety access to a nationwide, interoperable broadband network in a timely manner;
- To identify concerns in the existing structure of the 700 MHz Public/Private Partnership to inform the Commission decision making going forward;
- To promote wireless innovation and broadband network penetration while meeting the communications needs of the first responder community in a commercially viable manner;
- To identify funding opportunities for the public safety community to realize the promise of a broadband communications infrastructure with a nationwide level of interoperability; and
- To maximize the commercial and public safety benefits of the D Block spectrum.[53]

33. With these goals and principles in mind, the Commission sought comment first on whether and how to clarify or revise the rules governing the public safety component of the 700 MHz Public/Private Partnership, including rules governing the Public Safety Broadband Licensee, the entities eligible to obtain access to the public safety broadband network,[54] and the relocation of public safety narrowband operations.

34. With regard to the Public Safety Broadband Licensee, the Commission sought comment on (1) whether to revise or clarify the structure and criteria of the Public Safety Broadband Licensee as adopted in the *Second Report and Order*, including whether to clarify the requirement that the Public Safety Broadband Licensee must be a non-profit organization; [55] (2) how the Public Safety Broadband Licensee should be funded; [56] (3) whether to adopt additional measures to better enable Commission or Congressional oversight of the Public Safety Broadband Licensee's activities; [57] and (4) whether, in light of these and other possible changes, the Commission should rescind the current Public Safety Broadband License and seek new applicants.[58]

35. Regarding access to the public safety broadband network, the Commission sought comment on (1) whether to clarify which entities are eligible to use the public safety broadband network; (2) whether to adopt measures requiring or promoting use of the public safety broadband network by eligible public safety entities; [59] (3) whether State governments should have a role in coordinating the participation of public safety entities in the public safety broadband network; [60] and (4) whether to revise the rules regarding use of the public safety broadband network by Federal public safety agencies.[61]

36. With regard to the relocation of public safety narrowband operations, the Commission sought comment on issues including (1) whether to revise or eliminate the cap on relocation expenses; (2) whether, in light of the proposed re-auction of the D Block and associated timing issues, the Commission should continue to require relocation to be completed by the DTV transition date; (3) whether to amend the process for accomplishing the relocation; and (4) whether the Commission should extend the August 30, 2007 cut-off date for new narrowband deployments outside the consolidated narrowband spectrum.[62]

37. Turning to the 700 MHz Public/Private Partnership, the Commission asked, as a central matter, whether the Commission should continue to require the D Block licensee and the Public Safety Broadband Licensee to enter into a 700 MHz Public/Private Partnership.[63] The Commission further sought comment on a broad set of possible revisions to the 700 MHz Public/Private Partnership in the event the Commission continued that requirement, and on which changes would best serve the goal of making a broadband, interoperable network available on a nationwide basis to public safety entities.[64]

38. In particular, the Commission sought comment on (1) whether to establish a single nationwide D Block licensee or create multiple D Block licenses with, for example, Regional Economic Area Grouping (REAG) geographic license areas; [65] (2) whether to revise or clarify the technical requirements of the shared network that the D Block licensee must construct; [66] (3) whether the Commission should continue to require that the D Block licensee provide the Public Safety Broadband Licensee, in emergencies, with priority access to the D Block spectrum, and if so, whether the Commission should specify the circumstances that constitute an emergency for this purpose or establish other limits to such emergency priority access; [67](4) whether to revise the D Block licensee's network build-out or performance requirements and the extent to which they could be met through non-cellular technologies such as Mobile Satellite Systems (MSS); [68] (5) whether to revise or clarify the respective operational roles of the D Block licensee and the Public Safety Broadband Licensee in the provision of network services to public safety users once the shared network is constructed; [69] and (6) whether the Commission should regulate network service fees.[70]

39. The Commission further sought comment on the process by which these parties would establish a NSA that would further define the terms of the 700 MHz Public/Private Partnership. Among other issues, the Commission sought comment regarding (1) what rules should apply to the negotiation of the NSA; (2) whether to adopt dispute resolution procedures in the event the parties are unable to negotiate a voluntary agreement on NSA terms and if so, whether such procedures should include mandatory and binding adjudication of the disputes; (3) in the event that the process, with or without adjudication, is ultimately unsuccessful in establishing an NSA, whether and to what extent the D Block winner should be held liable for default payments; (4) whether, in the event of a failure to establish an NSA, the Commission should offer the D Block license to the next highest bidder or immediately re-auction it without the 700 MHz Public/Private Partnership condition; and (5) if a further re-auction is required, whether the D Block winning bidder should be prohibited from participating.[71]

40. The Commission also sought comment on a number of other auction-related issues, including (1) whether to restrict who may participate in the new auction of the D Block license; (2)

[53] *See Second FNPRM*, 23 FCC Rcd at 8052 para. 6.

[54] *See id*. at 8058–8062 paras. 24–32. The term ''public safety broadband network,'' which the Commission has used in the *Second FNPRM* and again in this *Third FNPRM*, refers to those functions and services of the shared network to which the Public Safety Broadband Licensee will administer access.

[55] *See id*. at 8064 para. 40, 8067 para. 48.

[56] *See id*. at 8065–8065 paras. 42–45

[57] *See id*. at 8067 para. 48, 8068 para. 51.

[58] *See id*. at 8068 para. 53.

[59] *See id*. at 8063 para. 37.

[60] *See id*. at 8068 para. 52.

[61] *See id*. at 8092–93 para. 126.

[62] *See id*. at 8111 paras. 180–182.

[63] *See id*. at 8069 para. 54.

[64] *See id*. at 8069 para. 54, 8070 para. 58.

[65] *See id*. at 8109–8112 paras. 183–86.

[66] *See id*. at 8071–78 paras. 61–83.

[67] *See id*. at 8079–80 paras. 85–87.

[68] *See id*. at 8081–86 paras. 90–105

[69] *See id*. at 8088–89 paras. 113–16, 8090–92 paras. 121–26.

[70] *See id*. at 8094–95 paras. 131–33.

[71] *See id*. at 8096–8100 paras. 138–54.

whether to establish a reserve price for such an auction and if so, at what level; [72] (3) whether to adopt an exception to the impermissible material relationship rule for the determination of designated entity eligibility with respect to arrangements for the lease or resale (including wholesale) of the spectrum capacity of the D Block license; [73] and (4) whether to modify the amount of the default payment potentially applicable to the D Block winning bidder.[74]

41. In addition to seeking comment on rules in the event that the Commission retains the 700 MHz Public/Private Partnership requirement, the Commission also sought comment on alternative rules for both the D Block and the Public Safety Broadband License in the event that the Commission does not retain the requirement. For the D Block, the Commission sought comment in particular on the appropriate geographic license area, performance requirements, license block size and license term, power and out-of-band-emission (OOBE) limits, and licensing partitioning and disaggregation rules, and whether to impose conditions such as an open-platform or wholesale requirement.[75] For the Public Safety Broadband Licensee, the Commission sought comment on how the Commission might still achieve the goal of ensuring that a nationwide, interoperable broadband network is available for use of public safety, and whether there are rules the Commission should impose on the Public Safety Broadband Licensee to achieve that goal.[76]

42. Finally, the Commission provided in the *Second FNPRM* that, before adopting final rules to address the issues raised therein, the Commission would present for public comment, in a subsequent further notice of proposed rulemaking, a detailed proposal including the specific rules that the Commission intended to promulgate.[77] The Commission further indicated that the Commission would seek comment on an expedited basis.[78]

III. Discussion

A. Whether to Retain the 700 MHz Public/Private Partnership Condition

43. *Background.* In the *Second Report and Order*, the Commission established rules mandating a public/private partnership between two nationwide licensees in the 700 MHz spectrum, the licensee of the commercial D Block and the Commission-designated licensee of the public safety broadband spectrum (Public Safety Broadband Licensee), to address the critical need of public safety users for interoperable, broadband communications. These rules required the D Block licensee to construct and operate a nationwide, interoperable broadband network across both the D Block and 700 MHz public safety broadband spectrum to provide broadband network services to both commercial and public safety entities.

44. The Commission found that promoting commercial investment in the build-out of a shared network infrastructure would address the most significant obstacle to constructing a public safety network—the limited availability of public funding. The Commission further determined that the network, by relying on a shared infrastructure to provide both commercial and public safety services, would achieve significant cost efficiencies, and benefit public safety agencies by allowing them to take advantage of off-the-shelf technology and commercial carriers' investments in research and development of advanced wireless technologies, as well as provide them with access to an additional 10 megahertz of broadband spectrum during emergencies. The Commission concluded that the public/private partnership approach thus provided the most practical means of speeding deployment of a nationwide, interoperable, broadband network for public safety service that is designed to meet their needs in times of crisis. At the same time, the Commission noted, it would provide the D Block licensee with rights to operate commercial services in the 10 megahertz of public safety broadband spectrum on a secondary, preemptible basis, which the Commission anticipated would help to defray the costs of build-out and also ensure that the spectrum is used efficiently.

45. In the *Second FNPRM*, the Commission sought comment on whether the public interest would best be served by the development of a nationwide, interoperable wireless broadband network for both commercial and public safety services through the 700 MHz Public/Private Partnership between the D Block licensee and the Public Safety Broadband Licensee, and whether the Commission should therefore continue to require that the D Block licensee and Public Safety Broadband Licensee enter into the 700 MHz Public/Private Partnership.

46. *Comments.* In response to the *Second FNPRM*, numerous commenters representing both public safety and commercial interests support continuing to require a public/private partnership between the D Block licensee and the Public Safety Broadband Licensee.[79] These commenters emphasize the importance of providing public safety first responders with an interoperable broadband wireless network [80] and they argue that a public/private partnership remains the best and possibly the only means of achieving these goals.[81] In particular, they argue that a public/private partnership is the only viable means of funding the construction of a nationwide network.[82] While noting that legislative appropriations could theoretically fund such a network, they

[72] *See id.* at 8104 paras. 163–64.

[73] *See id.* at 8105–06 paras. 166–67.

[74] *See id.* at 8108–09 paras. 172–75.

[75] *See id.* at 8115–16 paras. 192–205.

[76] *See id.* at 8119–20 paras. 206–212.

[77] *See id.* at 8052 para. 7.

[78] *See id.* at 8052 n. 10.

[79] *See* ACT Comments at 1; ALU Comments at 1; AASHTO Comments at 7; APCO Comments at 3; AT&T Comments at 2–4; Big Bend Comments at 1; California Comments at 7; Cellular South Comments at 1–2; Ericsson Comments at 3; IMSA *et al.* Comments at 1–2; MSUA Comments at 1; MSV Comments at i; NAEMT Comments at 1; NATOA *et al.* Comments at 7; NENA Comments at 2; NPSTC Comments at 1; NRPC Comments at 4; NTCH Comments at 1–2; PSST Comments at 4; RCA Comments at 1; RPC 6 Comments at 3; RPC 33 Comments at 2 (supporting the partnership ''as long as there is regional and/or local control over the applied use of this network''); Seybold Comments at 2; SIEC Comments at 1; Sprint-Nextel Comments at 9; TeleCommUnity Comments at 3, 5–6; Televate Comments at 3; TE M/A–COM Comments at 3; U.S. Cellular Comments at 1; Coverage Co. Comments at 1; VFCA Comments at 3; WFCA Comments at 1; AASHTO Reply Comments at 1; Cyren Call Reply Comments at 2; IACPNSA Reply Comments at 1; ICMA Reply Comments at 2; ITS America Reply Comments at 2; NPSTC Reply Comments at 3; Sprint Nextel Reply Comments at 2–3; Space Data Reply Comments at 2; SouthernLINC Reply Comments at ii.

[80] *See* AASHTO Comments at 7 (asserting that, ''[w]ithout a single network using a common technology as its basis, the Commission nation's emergency response and disaster relief workers will continue to be hampered in their ability to respond to any call for assistance in the wake of a natural or man caused situation.''); Cellular South Comments at 1; Ericsson Comments at 3; Peha Comments at 2; MSUA Comments at 1; NAEMAT Comments at 2; NPSTC Comments at 6; PSST Comments at 4; Qualcomm Comments at 7; SIEC Comments at 1.

[81] *See, e.g.*, APCO Comments at 3; Ericsson Comments at 3; IMSA *et al.* Comments at i; RCA Comments at 1. *See also* AT&T Comments at 2–3; Cellular South Comments at 1, 2; IMSA *et al.* Reply Comments at 3; ITS America Reply Comments at 2; NENA Comments at 2.

[82] *See* AT&T Comments at 3; NATOA *et al.* Comments at iii; NAEMT Comments at 2; PSST Comments at 4–5; *See also* Cellular South Comments at 2; Ericsson Comments at 3–4; NPSTC Comments at 7 (describing public/private partnership as ''the only reasoned course to meet this challenge given the lack of any funding to deploy the system.''); Sprint Nextel Comments at 10 (''public/private partnerships have been shown to be an effective means of galvanizing resources in the telecommunications and technology industries to meet critical needs in the public sector.'').

assert that such funding is not going to be forthcoming, or that it is too uncertain for the Commission to rely upon.[83]

47. Commenters point to other benefits of the public/private partnership as well. Several argue, for example, that by sharing spectrum between commercial and public safety users, the public/private partnership will promote spectrum efficiency.[84] AT&T, discussing the benefits of public/private partnerships more generally, also asserts that the commercial partner in a public/private partnership can ''leverage existing networks, technical assets, and spectrum resources to develop the interoperable network as quickly and efficiently as possible'' and that it might rely on ''previous experiences constructing wireless networks to ensure the construction of a reliable and effective public/private wireless broadband network.'' [85]

48. A number of commenters either oppose or express strong concerns regarding retaining the public/private partnership condition on the D Block.[86] They argue, among other things, that because of the high incremental cost of constructing a network to public safety specifications and build-out requirements, the network cannot be commercially viable without government funding.[87] They further argue that this problem is exacerbated by aspects of the 700 MHz Public/Private Partnership that make it difficult or impossible to determine revenue potential, and by the difficulty raising capital in the current economic environment. Several commenters argue that while the Commission might reduce the public safety-related requirements sufficient to permit commercial viability, this would defeat the public safety purpose of the network.[88]

49. Some commenters also argue that the Commission needs to address the unmet commercial needs of small and regional carriers for unencumbered spectrum suitable for advanced broadband services and that this demand can best be met by the D Block.[89] Based on this concern, for example, MetroPCS recommends that the Commission auction the D Block unencumbered and ''seek congressional action to have the proceeds of such auction be used by the public safety community to build the network it needs.'' [90]

50. Some public safety entities oppose the public/private partnership out of concern that the commercial incentives of the D Block licensee are inconsistent with its obligation to meet public safety needs. These commenters assert that, due in part to a lack of confidence in the network, and in some cases to the availability of local alternatives, local public safety entities will not use the network, and will therefore receive no benefit from the 700 MHz public safety broadband spectrum.[91] These commenters propose that, instead of using the public safety broadband spectrum in the 700 MHz Public/Private Partnership, the Commission should provide public safety entities direct access to the spectrum in order to build out their own separate networks.[92] AT&T, Verizon Wireless, and others support a public-private partnership but argue that a Request for Proposal process is a better alternative for accomplishing this goal than a reauction of the spectrum.[93] Specifically, AT&T and Verizon propose a process in which the Commission would reallocate the D Block spectrum to the PSBL, who in turn would use the RFP process to select a lessee or lessees to build a shared network.[94] Verizon Wireless also proposes an alternative RFP process in which the Commission would ''auction the spectrum on an unencumbered basis and give the proceeds to public safety to support the deployment of interoperable communications solutions.'' [95] The public safety licensee would, in turn, use an RFP process to establish a partnership with a commercial provider (presumably through some leasing arrangement).[96]

51. *Discussion.* The Commission tentatively concludes that it should continue to require, as a license condition, that the D Block licensee enter into a public/private partnership with the Public Safety Broadband Licensee for the purpose of constructing a shared wireless broadband network that will provide interoperable broadband service to public safety entities. Throughout this proceeding, the Commission has sought to promote nationwide access by public safety agencies to interoperable broadband wireless services operating over a modern, IP-based system architecture. The Commission has further sought to achieve certain ancillary goals, such as ensuring the robustness and survivability of the public safety broadband system as well as promoting cost and spectrum efficiency.[97] Achieving these public safety goals remains very much in the public interest. The Commission has noted

[83] *See, e.g.*, NATOA *et al.* Comments at iii. *See also id.* at 7 (''Congress has made it clear that government funding * * * is not possible''); APCO Reply Comments at 3 (''the Commission cannot make policy decisions based on a 'hope and prayer' that Congress will act.'').

[84] *See* AT&T Comments at 4; Cellular South Comments at 2; NATOA *et al.* Comments at 8; *see also* PSST Comments at 5–6.

[85] AT&T Comments at 2–3. *See also* IMSA *et al.* Reply Comments at 6; PSST Comments at 6.

[86] IAFF Comments at 1; King County Comments at 1–3; MetroPCS Comments at 5–6; Motorola Comments at 5–7; NYPD Comments at 3–5; RTG Comments at ii; San Francisco Comments at 2–4; Verizon Wireless Comments at 7–11; Rivada Reply Comments at 1–2, 4–5.

[87] *See, e.g.* Motorola Comments at i, 2, 7, 9 (significant buildout and operating costs ''will dramatically affect the ability of the D-Block licensee(s) to compete effectively with other commercial services on price'' and that ''further direction, legislative action, and funding are needed from Congress to ensure that first responders have the necessary resources to deploy a broadband video and data network''); King County Comments at 2; NYPD Comments at 3 (''there is simply no business case for a commercial wireless network operator to build a nationwide network that will meet public safety coverage and survivability standards.''); RPC 9 Comments at 3; San Francisco Comments at 7; Verizon Wireless Comments at 7–8. *See also* Motorola Reply Comments at 2.

[88] Motorola Comments at 5; NYPD Reply Comments at 4–5; Verizon Wireless Comments at 8; Verizon Wireless Reply Comments at 1. *See also* MetroPCS Comments at 14. Cf. ITS America Reply Comments at 3 (''additional funding from Congress to cover the incremental costs of a Public Safety network compared to that of a commercial network is likely to be required.'').

[89] *See* MetroPCS Comments at 9–11; RTG Comments at 4–5.

[90] MetroPCS Comments at 6, 9–11. *See also* RTG Comments at 4; CTIA Reply Comments at 2–3, 5. MetroPCS also argues that certain aspects of the 700 MHz Public/Private Partnership, including the requirement of commercial access to public safety spectrum on a secondary basis and of public safety access to commercial spectrum in emergencies, may violate Section 337 of the Communications Act. *See* MetroPCS Comments at 14–16. The Commission addresses these legal issues in the Commission discussion of spectrum use in the shared wireless broadband network.

[91] NYPD Comments at 3 (asserting that public safety agencies in New York City have ''little incentive * * * to pay subscriber fees to access a nationwide public/private broadband network'' because a municipal public safety broadband data network will be fully deployed by the end of 2008); San Francisco Comments at 2–3; *see also id.* at 2 (describing results of a partnership requirement as ''an uncertain auction, a vague network sharing agreement, an untested network, and the prospect that many local public safety agencies could choose not to participate''); RTG Comments at 2.

[92] San Francisco Comments at 2; King County Comments at 2–3; NYPD Comments at 5–8. *See also* NYPD Comments at 7, 10; Philadelphia Comments, *generally* (arguing that local governments should have a right to ''opt-out'' of the nationwide network and construct an independent network in the public safety broadband spectrum''); TDC Comments at 3; Rivada Reply Comments at 1,2, 4.

[93] *See, e.g.*, AT&T Comments at 2.

[94] *See* AT&T Comments at 6; Verizon Wireless Comments at 21, n.33.

[95] Verizon Wireless Comments at 21, n.33.

[96] *Id.* (indicating that the public safety licensee could either use its existing allocation for the partnership, or the Commission could reallocate the D Block to public safety and license it to public safety licensee).

[97] *See 700 MHz Ninth Public Safety Notice*, 21 FCC Rcd at 14842–43 paras. 12–18; *Second Report and Order*, 22 FCC Rcd at 15431 paras. 396–97; *Second FNPRM*, 23 FCC Rcd at 8051–52 para. 6.

previously the many potential benefits of broadband service to public safety,[98] and the record in this proceeding confirms the growing importance of broadband communications to public safety efforts.[99] The Commission finds that achieving a nationwide level of interoperability among and between public safety communications systems and devices so that public safety entities can communicate and coordinate their activities, particularly in response to emergencies, remains a critical imperative.[100] After considering the results of Auction 73 and the record in this proceeding, the Commission tentatively conclude that a mandatory public/private partnership between the licensee or licensees of the D Block and the licensee of the public safety broadband spectrum (which the Commission will again refer to as the ''700 MHz Public/Private Partnership'') remains the best option available to us to achieve these goals.

52. The Commission continues to find that, as a regulatory approach for promoting the development of a nationwide, interoperable broadband network for public safety, the basic construct of the 700 MHz Public/Private Partnership model has a number of benefits. As the Commission stated in the *Second Report and Order*, the use of a shared infrastructure for both commercial and public safety services will enable a significant cost savings in the construction of the network.[101] Further, making the construction and operation of this network a license condition will help to promote development of public safety network with access on a nationwide basis, lead to economies of scale in network infrastructure and equipment, and provide a regulatory framework for ensuring construction on a timely basis. In addition, by providing the commercial partner with secondary preemptible access to the public safety spectrum and providing public safety limited priority access to the commercial spectrum in times of emergency, the 700 MHz Public/Private Partnership furthers the important public interest goal of maximizing efficient and intensive spectrum use,[102] without compromising safety or commercial feasibility, resulting in a total net benefit to public safety and commercial entities. This approach may also serve important commercial interests, such as promoting the availability of broadband services to remote areas.

53. Most importantly, the Commission finds that the 700 MHz Public/Private Partnership remains the only means, in the absence of legislative appropriations, of obtaining funding for the construction of a network or networks to provide public safety with nationwide, interoperable broadband service. The record in this proceeding confirms the limited availability of public funding for the construction of a public safety broadband network, and the importance of the 700 MHz Public/Private Partnership as a means to promote commercial investment for that purpose.[103] The Commission notes that several commenters have argued that the public safety community's need for such funding is best addressed by additional government appropriations instead of through commercial investment.[104] While the Commission agrees that government funding would be a solution, the Commission is not aware of any current appropriations for such networks, and certainly none sufficient to provide access on the scale addressed by the 700 MHz Public/Private Partnership proposal. Similarly, Congress has not authorized the Commission to use 700 MHz auction funds for network construction. Therefore, so long as there is a reasonable likelihood of success with the 700 MHz Public/Private Partnership approach, the Commission declines to abandon this course in favor of a speculative approach that relies on government funding that may not materialize.

54. The Commission is also not persuaded to rely solely on local and state entities to build out their own networks in the 700 MHz public safety broadband spectrum as a substitute for construction by mandatory public/private partnerships. Although a few jurisdictions such as New York City have determined to use commercial service providers to satisfy their wireless broadband needs, none of these jurisdictions have stated that these networks provide anything more than commercial-grade service, or that they were able to achieve the economies of scale and nationwide interoperability inherent in the 700 MHz Public/Private Partnership approach. As more and more public safety agencies take advantage of the benefits of broadband applications, the Commission is concerned that in the end the Commission will again end up with balkanized networks incapable of even minimum interoperability.[105] Again, when faced with future calamities, the Nation will continue to suffer from the same dangerous shortcomings that were encountered following natural and man-made disasters of the past because there will remain no dedicated public safety spectrum with a nationwide level of interoperability. The Commission also remains concerned that, due to the funding issues discussed above, such local or regional efforts will occur only in a few jurisdictions, leaving most of the country's public safety community without wireless broadband for the foreseeable future. In contrast, the 700 MHz Public/Private Partnership rules

[98] *See 700 MHz Ninth Public Safety Notice*, 21 FCC Rcd at 14842 para. 12 (''police officers could exchange mug shots, fingerprints, photographic identification, and enforcement records; firefighters could have access to floor and building plans and real-time medical information; forensic experts could provide high resolution photographs of crime scenes and real-time video monitoring transmitted to incident command centers.'').

[99] *See, e.g.*, NAEMT Comments at 2 (''EMS communication's future is broadband. To save time in life-threatening situations, it will become essential to use technologies now in development to send data in addition to voice communications.''); *see also* Ericsson Comments at 3; NPSTC Comments at 6; PSST Comments at 4; Testimony of Robert M. Gurss, Director, Legal & Government Affairs, Association Of Public-Safety Communications Officials-International, Inc., July 30, 2008, *http://www.fcc.gov/realaudio/presentations/2008/073008/gurss.pdf* (''Broadband video, high speed images, Internet access, and data of an endless variety would greatly enhance the ability of police, fire, EMS and other personnel to protect the public and respond to emergencies.'').

[100] *See, e.g.*, Cellular South Comments at 1; PSST Comments at 4; SIEC Comments at 1. *See also* AASHTO Comments at 7 (''Without a single network using a common technology as its basis, the Commission nation's emergency response and disaster relief workers will continue to be hampered in their ability to respond to any call for assistance in the wake of a natural or man caused situation.'').

[101] *See, e.g., Second Report and Order*, 22 FCC Rcd at para. 396.

[102] *See, e.g.*, 47 U.S.C. 151, 309(j)(3)(D).

[103] *See* NAEMT Comments at 2 (''No other proposal for a national public safety broadband system has suggested how to fund it other than the FCC's public/private partnership concept''); *see also* ACT Comments at 1; AT&T Comments at 3; NATOA Comments at 21; PSST Comments at 4–5; Sprint Nextel Comments at 10 (''public/private partnerships have been shown to be an effective means of galvanizing resources in the telecommunications and technology industries to meet critical needs in the public sector.'').

[104] *See, e.g.*, MetroPCS Comments at 6; Motorola Comments at 5–6; RTG Comments at 3, n.3. *See also* Verizon Wireless Comments at 30 n.52. *Cf.* Florida Region 9 Comments at 3 (''Without Federal funding the Commission believes any public/private partnership will fail the requirements of the PSST.'').

[105] The Commission notes that existing rules permit local jurisdictions to construct independent networks operating over the 700 MHz public safety broadband spectrum, with certain limitations and conditions, in the event that the shared wireless broadband network is not scheduled to cover the relevant jurisdiction by the end of the D Block license term. *See* 47 CFR 27.1330(b)(5). In addition, these rules provide local jurisdictions with a method, again with certain conditions, to construct a network prior to the anticipated construction date of the shared wireless broadband network in that jurisdiction, subject to later integration. *See id.* As discussed elsewhere, the Commission tentatively concludes that the Commission should retain these rules.

proposed herein will provide a plan to provide broadband coverage for public safety entities on a significantly more expanded basis than individual agreements with commercial service providers or buildout by individual jurisdictions in the 700 MHz broadband spectrum could achieve.

55. As noted above, some commenters have argued that, whatever benefits the 700 MHz Public/Private Partnership might possess, the model cannot be made commercially viable except by reductions in the network design and coverage requirements that would sacrifice its suitability as a public safety network. The Commission recognizes that, for the 700 MHz Public/Private Partnership to achieve the objectives of this proceeding, it must meet the essential requirements of public safety communications systems and also provide a level of commercial viability sufficient to encourage investor participation and to permit long-term commercial success in a competitive environment. The Commission also acknowledges that there is some tension between these goals. To the extent that the network is required to meet higher standards for reliability, hardening, security, and other features than are being implemented in competing commercial broadband networks, and to build out in commercially unprofitable areas, such costs will pose an additional challenge to the commercial viability of the network. The Commission also notes that the financial challenges posed by the construction and operation of the shared wireless broadband network may be exacerbated by the prevailing condition of the nation's economy overall and its impact on the availability of capital.[106]

56. Based on the record before us, however, the Commission tentatively concludes that it is possible to establish requirements that are commercially viable while still meeting the essential requirements of public safety first responders. First, the Commission anticipates that a part, although likely not all, of the incremental cost of meeting public safety specifications and construction will be accounted for in the discounted price of the auctioned D Block spectrum.[107] In addition, the Commission finds that certain reductions or modifications of the requirements in the existing rules are consistent with the Commission's fundamental public safety objectives, and will significantly improve the commercial viability of the 700 MHz Public/Private Partnership, thus enhancing the likelihood that public safety users will in fact receive the benefits the Commission seeks to achieve in this proceeding. The Commission also expects that, to some extent, additional public safety-related requirements should provide some degree of market advantage, particularly to public safety users and others, such as critical infrastructure users.[108] The Commission notes that despite the Commission tentative conclusion that entities such as critical infrastructure users are not eligible for service as public safety users, they may still receive service as customers of the D Block licensee(s).[109]

57. The Commission does find that many of the specific problems noted by commenters regarding the existing rules governing 700 MHz Public/Private Partnership present legitimate concerns. The Commission tentatively concludes that these issues can be successfully addressed, however, through appropriate rule modifications. On the commercial side, the Commission agrees, for example, that for potential bidders to make an informed determination regarding the viability of the partnership, they must have reasonable certainty and clarity regarding their obligations under the rules, and thus, the likely costs of constructing and operating the shared wireless broadband network. They also need to have some ability to predict the revenue potential of the shared wireless broadband network. While the Commission may not have provided sufficient certainty on either of these factors under the existing rules, the Commission is persuaded that it is possible to provide such certainty. Conversely, regarding certain public safety objections that the commercial D Block licensee will not adequately serve their interests, the Commission finds that appropriate oversight measures, including reporting requirements, can address these concerns. Accordingly, in the sections below, the Commission addresses these issues in greater detail and reaches tentative conclusions regarding how best to implement the 700 MHz Public/Private Partnership to respond to these concerns.

58. Though the Commission tentatively concludes that it should retain the public/private partnership and assign commercial licenses for the D Block by competitive bidding, the Commission also seeks comment on whether assigning licenses through a Request for Proposal (RFP) process would increase the likelihood of successfully deploying a nationwide interoperable broadband network useable by public safety. The Commission seeks comments on both a detailed proposal for how the RFP process would be conducted, as well as why it would be superior to an auction of licenses consistent with the rules proposed herein. The Commission seeks comment as well on whether any RFP process would be consistent with the Commission's obligations under Sections 309(j) and 337(a) with respect to the allocation of spectrum and the method of assigning D Block licenses.

B. Service Rules for the D Block Licensee and the 700 MHz Public/Private Partnership

1. Geographic Area for D Block License

59. *Background.* In the *Second Report and Order,* the Commission determined that the D Block license would be auctioned as a single, nationwide license.[110] In the *Second FNPRM,* the Commission revisited this decision, in part, because no bidder matched the reserve price the Commission set for the

[106] *See* Council Tree Comments at ii.

[107] *See* APCO Comments at 37. *But see* Verizon Wireless Comments at 8 (''the D Block and public safety broadband spectrum are not worth nearly enough to offset the massive cost of building a national broadband network to the mission-critical specifications of public safety * * * even if the D Block were given away for free,'' and estimating the incremental costs of hardening and build-out beyond commercial footprints at over $20 billion). *See also* APCO Comments at 37.

[108] *See, e.g.* SouthernLINC Reply Comments at ii, 4 (noting that, ''given its hardened network and best of class design, public safety agencies throughout SouthernLINC's territory have relied on SouthernLINC for day-to-day and emergency operations since the network became operational in 1995,'' and that nearly one-quarter of its customer base is comprised of ''federal, state, and local agencies''). *But see* Motorola Comments at 4–5 (stating that the number of first responders is ''insufficient * * * to amortize the high costs associated with hardening the network and constructing infrastructure covering over 99.3 percent of the U.S. population.'').

[109] The Commission note that the record provides some evidence indicating that networks have already been constructed that are both suitable for public safety use and commercially viable. SouthernLINC, for example, notes that since 1995, it has operated a commercial network ''specifically designed to withstand the stressful weather conditions caused by hurricanes in the Southeast,'' with features ''far more robust than a traditionally-designed, commercial-grade network designed with some additional redundancy.'' SouthernLINC Reply Comments at 3–4; *but see id.* at 4 (''[a] true public-private partnership can work, but it is not easy, and the Commission should recognize that this proceeding may not be the right vehicle to make it happen''). In addition, PGCC, after reviewing the results of a project to construct a Wi-Fi network over a 30-mile corridor in Arizona for public safety and other users, concluded that the ''experience supports the FCC position proposing to use D–Block and the adjacent Public Safety spectrum for nationwide broadband connectivity with commercial ownership subject to Public Safety constraints.'' PGCC Comments at 11.

[110] *Second Report and Order,* 22 FCC Rcd at 15420 para. 369.

D Block license.[111] In addition to asking if the Commission should retain the single, nationwide license approach, the Commission proposed authorizing the D Block among multiple licensees and asked several questions related to such a proposal. The Commission asked what size the license areas should be if the D Block were split into regional licenses? For instance, should the blocks be Regional Economic Area Groups (REAGs), Economic Areas (EAs), or Cellular Market Areas (CMAs)? [112] The Commission also sought comment on whether the D Block should be split into one license (or several licenses) covering high-population density areas and a second license (or set of licenses) covering low-population density areas.[113] The Commission further sought comment on whether the Commission should modify any of the policies or rules previously adopted or proposed with respect to a D Block 700 MHz Public/Private Partnership to ensure that the primary goal of a national, interoperable, communications network for public safety agencies is not jeopardized.[114]

60. Commenters offer divergent views on whether the Commission should maintain the single, nationwide, license approach or allocate the D Block through multiple, smaller, regional licenses. Sprint Nextel, Rural Cellular Association (RCA), Ericsson, Inc. (Ericsson), the PSST, the Association of Public Safety Communications Officials (APCO), National Public Safety Telecommunications Council (NPSTC), and most public safety organizations prefer the single, nationwide license approach because, they contend, it should present the most cost effective approach to designing a broadband network that achieves interoperability and connectivity across geographic regions on a nationwide basis.[115] Some commenters object to regional licensing on grounds that some or even many regions might go unsold at auction, resulting in checkerboard coverage.[116] NPSTC argues that integrating regional networks would present technical and logistical challenges and could take years to implement.[117]

61. A number of commenters, however, favor a regional approach. AT&T, Verizon Wireless, and smaller regional service providers, such as MetroPCS, United States Cellular Corporation US Cellular and Rural Telecommunications Group (RTG), prefer the multiple, regional license approach for the D Block because, among other reasons, regional licenses would permit participation by smaller providers, who may be unable to compete on a nationwide scale, but may have the resources to build regional networks that could be leveraged to rapidly deploy a nationwide system.[118] US Cellular recommends that the Commission adopt geographic areas that align with the ''55 National Public Safety Planning Advisory Committee (NPSPAC) regions.'' [119] US Cellular argues that these regions are of similar size to MEAs and ''with over two decades of experience in meeting the wireless needs of state and local public safety authorities through [NPSPAC] regional committees operating pursuant to a national plan and FCC order, there are also distinct advantages in aligning D Block licenses with the NPSPAC.'' [120] US Cellular and RTG also contend that smaller license areas could lead to more rapid deployment of public safety communications networks in rural areas.[121]

62. TeleCommUnity, a national association of local governments, and Charlotte, North Carolina, Houston, Texas, and Montgomery County, Maryland (TeleCommUnity), contends that there are strong arguments for allocating regional licenses, for the D Block, as well as the single, nationwide license approach.[122] The New York City Police Department (NYPD) and the City of Philadelphia (Philadelphia) contend that the Commission should adopt an approach that permits local public safety agencies to develop their networks that would then interconnect with other local public safety agencies.[123] These entities argue that a single, nationwide license could impede the development of their local public safety networks.[124] Coverage Co. and Space Data Corp. ask the Commission to adopt an approach that assigns one license for urban or more populated areas and another license for rural or less populated areas.[125] Other entities, such as Google and Qualcomm, do not appear to favor a single, nationwide license or a multiple regional license approach. They are more concerned that the Commission establishes a public safety broadband network that is interoperable as soon as practicable.[126]

63. *Discussion.* The Commission tentatively concludes that the Commission should offer the D Block at auction as both a single, nationwide license and as regional licenses. The Commission proposes that the regional geographic areas would be comprised of the 55 700 MHz RPC regions,[127] and

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[111] *Second FNPRM,* 23 FCC Rcd 8047, 8048–49 para. 1.

[112] *Second FNPRM,* 23 FCC Rcd at 8111–12 para. 183.

[113] *Second FNPRM,* 23 FCC Rcd at 8112 para. 185.

[114] *Second FNPRM,* 23 FCC Rcd at 8112 para. 184.

[115] APCO Comments at 40; *see also,* International Municipal Signal Association, International Association of Fire Chiefs, Inc., Congressional Fire Services Institute, and Forestry Conservation Communications Association (IMSA et al.) Comments at 12; National Association of Telecommunications Officers and Advisors, National Association of Counties, National League of Cities, and U.S. Conference of Majors (NATOA, et al.,) Comments at 17; National Public Safety Telecommunications Council (NPSTC) Reply Comments at 9; Region 33, 700 MHz Planning Committee (Region 33) Comments at 19–21; Virginia Fire Chiefs Association (VFCA) Comments at 3; Rural Cellular Association (RCA) Comments at 2; Sprint Nextel Comments at 11; Public Safety Spectrum Trust Corporation (PSST) Reply Comments at 12; Testimony of Chief Harlin R. McEwen, Chairman, PSST FCC *En Banc* Hearing, New York, July 30, 2008 at 2; Ericsson Comments at 34; Council Tree Reply Comments at 13; Intelligent Transportation Society of America (ITS America) Reply Comments at 3.

[116] *See e.g.* APCO Comments at 40.

[117] NPSTC Reply Comments at 10.

[118] AT&T Comments at 24–25; Verizon Wireless Comments at 29–31; Verizon Wireless Reply Comments at 11; Metro PCS Comments at 20; US Cellular Comments at i, 15–16; RTG Comments at ii, 1; NTCH Comments at 9–10; Testimony of William J. Andrle, Jr. Northrop Grumman Information Technology FCC *En Banc* Hearing, New York, July 30, 2008 at 2.

[119] US Cellular Comments at 2. US Cellular later made an *ex parte* presentation in which it argued that the Commission should license the D Block through geographic areas that followed state geographical boundaries. *See* Letter from Warren G. Lavey, on behalf of US Cellular, to Marlene H. Dortch, Secretary, WT Docket No. 06–150, filed Aug. 29, 2008, Attachment at 3.

[120] US Cellular Comments at i. *See also* AT&T Reply Comments at 9; City of Philadelphia Reply Comments at 6–7 & nn. 13, 16.

[121] RTG Comments at ii, 4; US Cellular Comments at 2.

[122] TeleCommUnity Comments at 13–14.

[123] NYPD Reply Comments at 4–5; Philadelphia Reply Comments at 8.

[124] NYPD Reply Comments at 7–14; Philadelphia Reply Comments at 5–8.

[125] Coverage Co. Comments at 2; Space Data Corp. Comments at 2–3, 12.

[126] Google Comments at 3; Qualcomm Comments at 8.

[127] Although some commenters propose the use of NPSPAC regions for licensing, the Commission tentatively finds it more appropriate to use the Regional Planning Committee (RPC) regions, which are largely but not entirely identical. The Commission notes that the NPSPAC regions were established in connection with the 800 MHz public safety spectrum. The term ''NPSPAC'' is an acronym for the National Public Safety Planning Advisory Committee, which was established by the Commission in 1986 to advise the Commission on rules for the 821–824 MHz/866–869 MHz band. *See* Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems Amendment of Parts 2, 15, and 90 of the Commission's Rules and Regulations to Allocate Frequencies in the 900 MHz Reserve Band for Private Land Mobile Use Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, GEN Docket No. 84–1231 RM–4812, GEN Docket No. 84–1233 RM–4829, GEN Docket No. 84–1234, *Report and Order,* 2 FCC Rcd at 1825 para. 46 (1986). The 821–824 MHz/866–869 MHz band was eventually

three additional regions, and to refer to these 58 regions as PSRs for D Block licensing purposes.[128] The three additional regions will cover (1) the Gulf of Mexico; (2) the Territory of Guam (Guam) and the Commonwealth of Northern Mariana Islands (Northern Mariana Islands); and (3) the Territory of American Samoa (American Samoa), and will be identical to the current Economic Area (EA) licensing areas for those same regions.

64. As the Commission explains further below, the Commission finds that both nationwide and PSR area licenses have advantages that could help achieve the public interest goal of establishing a commercially viable interoperable public safety broadband network on a nationwide basis. Further, while offering the D Block on a regional basis raises the risk of unsold areas, offering only a single, nationwide license may increase the risk that there are no bids on the D Block spectrum at all. Accordingly, to provide the greatest likelihood of success in offering new licenses for the D Block spectrum with a public/private partnership condition, the Commission proposes to permit entities to bid on both nationwide and regional licensing options and to allow auction results to determine on which geographic area basis the D Block will ultimately be licensed pursuant to auction rules and procedures that the Commission explains elsewhere in this *Third FNPRM.*

65. *Nationwide Option.* The Commission tentatively concludes that one of the D Block geographic license area options that parties should be able to bid upon is a single, nationwide license. The Commission proposes to offer a nationwide D Block license because the record in this proceeding reaffirms that the Commission can achieve its goals for the public safety broadband network through this type of license.[129] In particular, one of the Commission's primary goals for the authorization of the D Block is to ''address a vitally important problem: promoting interoperability, on a nationwide basis, for public safety communications.'' [130] The record in response to the *Second FNPRM* supports the Commission's previous determination that interoperability is a critical need for the public safety broadband network and that assigning the D Block to a single, nationwide licensee may help to facilitate achieving nationwide interoperability both within and between jurisdictions. The Commission notes that the majority of public safety agencies assert that a single, nationwide license is the best way to achieve an interoperable network.[131] Although the Commission tentatively finds that it is possible to achieve interoperability between regional networks, a nationwide license would likely simplify the task of ensuring interoperability and avoid problems in its implementation. For example, it would eliminate the need for technology coordination, roaming arrangements, and interconnection arrangements between different regional networks.

66. Licensing the D Block on a nationwide basis could also help to achieve the other goals that the Commission has for the public safety broadband network, *i.e.*, that it be cost effective, spectrally efficient, flexible and employ an advanced IP-based network.[132] A single, nationwide license may provide opportunities for cost savings through elimination of redundant equipment (*e.g.*, mobile base station deployments in the event of natural disasters), processes (billing, etc.) or staff (*e.g.*, public safety support), and greater economies of scale for network equipment or handsets.[133] These cost savings might enhance the ability of the D Block licensee to rapidly build the public safety broadband network in rural, expensive-to-serve, less populated areas. The Commission therefore tentatively concludes that the economies of scale that a commercial entity could achieve through a single, nationwide license could promote the rapid deployment of an advanced nationwide public safety broadband network.

67. In addition, a single, nationwide license could facilitate coordination between the D Block licensee, the Public Safety Broadband Licensee, and the public safety agencies that use the network. As discussed elsewhere in this Third FNPRM, the public/private partnership concept requires the D Block licensee to establish an NSA with the Public Safety Broadband Licensee and, thereafter, coordinate with the Public Safety Broadband Licensee to ensure that the network effectively serves the interests of the public safety community. The coordination scheme envisioned for the D Block could be particularly efficient if there were only one licensee required to coordinate and negotiate with the Public Safety Broadband Licensee and local public safety agencies.

68. Some wireless service providers argue that the single, nationwide license will not work because, in their opinion, no single entity would find it commercially viable to develop a nationwide public safety communications network with the technical requirements and other rules that the Commission had imposed, in the *Second Report and Order,* on the D Block.[134] As the Commission discusses in more detail, elsewhere, the Commission has made substantial changes to the technical specifications and performance requirements that should help make the single, nationwide license more commercially viable. These policies should ease the

licensed on a regional basis with the resulting regions designated as NPSPAC regions. However, the initial rules governing the 700 MHz public safety spectrum, which included the regional approach governing a portion of that spectrum, were established in a separate proceeding. *See* Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, WT Docket No. 96–86, *First Report and Order and Third Notice of Proposed Rulemaking,* 14 FCC Rcd 152 (1998) (*700 MHz Public Safety First Report and Order and Third Notice*). The Commission tentatively finds that the 700 MHz regions are the more appropriate regional basis to use in the instant proceeding. As noted above, the 700 MHz regions are almost, but not quite, identical to the 800 MHz NPSPAC regions. Although the NPSPAC regional boundaries were used as the initial basis for the 700 MHz public safety regions, *see id.* at 263, Appendix C (List of Regions), two of the regions have since been modified. *See* Public Notice, ''Public Safety 700 MHz Band—General Use Channels Approval of Changes to Regional Planning Boundaries of Michigan and Connecticut,'' 16 FCC Rcd 16359 (2001). The Commission proposal would thus license the D Block in accordance with these regional boundaries as modified for Connecticut and Michigan. As for terminology, because the NPSPAC was not involved in the 700 MHz proceeding, it would be a misnomer to identify these 700 MHz geographic areas as NPSPAC regions. It is more accurate to refer to the regions as RPC regions because the spectrum allocation in these areas is governed by the RPCs. *See* 47 CFR 90.531.

[128] *See* Appendix A.

[129] *Second Report and Order,* 22 FCC Rcd at 15420 para. 369. Thus, the license will cover the 50 states, the Gulf of Mexico, and the territories.

[130] *Second FNPRM,* 23 FCC Rcd at 8051 para. 5; *see also Second Report and Order,* 22 FCC Rcd at 15419 para. 365. In addition, in the *700 MHz Public Safety Eighth Notice* adopted in March 2006, the Commission emphasized its commitment ''to ensuring that emergency first responders have access to reliable and interoperable communications.'' *700 MHz Public Safety Eighth Notice,* 21 FCC Rcd at 3682 para. 31; *see also, Second FNPRM,* 23 FCC Rcd at 8051 para. 4; *Second Report and Order,* 22 FCC Rcd at 15420 para. 369; *700 MHz FNPRM,* 22 FCC Rcd at 8156 para. 253.

[131] *See, e.g.*, APCO Comments at 40; IMSA *et al.* Comments at 12; NATOA, *et al.* Comments at 10.

[132] *Second Report and Order,* 22 FCC Rcd at 15420 para. 369.

[133] *See Second Report and Order,* 22 FCC Rcd at 15298, 15324 paras. 20, 82 (explaining how larger geographic service areas permit service providers to establish economies of scale).

[134] AT&T Comments at 7–8; Verizon Wireless Comments at 7–8, 24–31.

burdens on a single, nationwide D Block licensee.

69. *Public Safety Region Option.* The Commission tentatively conclude that the Commission should revise the Commission rules to also provide the option of regional geographic area licensing of the D Block on the basis of 58 PSRs, 55 regions of which would correspond to the 55 RPC regions, and which would include three additional regions covering (1) the Gulf of Mexico; (2) Guam and the Northern Mariana Islands; and (3) American Samoa.[135] As the Commission explains further below, PSR licensees could lead to a rapid deployment of the public safety broadband network that is tailored to respond to the public safety communications needs of particular regions.

70. The Commission's proposal to permit licensing of the D Block on a regional basis is based on several factors. Section 309(j) of the Communications Act instructs that, in designing competitive bidding systems, the Commission should consider the dissemination of licenses among a wide variety of applicants when that consideration would serve the public interest.[136] Regional licensing could allow smaller commercial entities that do not have the resources to acquire a nationwide license and meet nationwide performance requirements to participate in bidding for D Block licenses, thereby increasing the chances of a successful public/private partnership for at least the majority of the nation. In addition, regional licensing could lead to enhanced build-out and faster deployment to less populated, rural areas. Those entities interested in a larger geographic footprint can bid on, and if successful, aggregate multiple PSR regional licenses. The record in response to the *Second FNPRM* demonstrates that nearly all nationwide carriers and several regional carriers, which filed comments, support licensing on a regional basis.[137] As the Commission explains elsewhere, in order to ensure that authorizing the D Block through multiple, regional licenses will achieve nationwide interoperability, the Commission has proposed roaming and certain other interoperability requirements for D Block licenses. In order to reduce the possibility that regional licensing of the D Block might result in large areas that are unserved by the public safety broadband network, the Commission tentatively concludes that an auction of the D Block spectrum must result in winning D Block license bidders with licenses covering at least 50 percent of the nationwide population or the results of the auction will be void.[138]

71. In addition, regional D Block licensees could be particularly responsive to the unique needs of state, regional, and local public safety agencies. Regional licensees could coordinate with local public safety entities and ensure that public safety communications are tailored to meet unique local needs in particular geographic areas. PSR licensees may, for example, take into account regional differences in terrain and public safety needs in determining how to set up and operate the system, which could be more cost effective in certain respects and better suited to regional needs than a one-size fits-all system. PSR licenses may also be more desirable because the assignment of a single, nationwide, D Block license may increase risks of disruption for public safety entities in the event the single nationwide operator is commercially unsuccessful. Having regional licensees, with license areas mostly following state jurisdictional boundaries, may also address certain concerns in the record that the development of the nationwide public safety broadband network should not impede the existing networks that some local agencies have spent substantial resources deploying.[139]

72. Assigning the D Block through PSR licenses that are geographically aligned with the 55 RPC regions could further enhance the responsiveness of the PSR licensees to the public safety communications needs of their specific geographic regions and facilitate the development of an interoperable public safety broadband network. The Commission created the RPC regions for 700 MHz public safety general use spectrum to maximize the efficiency of public safety's use of this spectrum and to foster the accommodation of a wide variety of localized public safety communications requirements in different areas of the Nation. Creating regional D Block licenses whose boundaries correspond with those of the RPC regions should facilitate interaction between the PSR licensees and the existing RPCs. The Commission anticipates that these regional entities have considerable institutional knowledge about the communications needs and concerns of public safety entities within their jurisdictions. PSR licensees could coordinate with them for their respective licensing area to learn about any public safety communications challenges or needs that might be specific to the particular region. RPCs might also help the Public Safety Broadband Licensee and PSR licensees negotiate the build-out schedule, fees, and other terms of their respective NSAs that would be tailored for a particular PSR region. RPCs could also share with PSR licensees approaches towards establishing inter-regional interoperability that have been more successful than others.[140]

73. *License Partitioning and Disaggregation.* The Commission tentatively concludes that it would not serve the public interest to change the current rule governing D Block partitioning and disaggregation, and thus to continue prohibiting any partitioning and disaggregation of a D Block license. The Commission seeks comment on this conclusion.

74. *Other Geographic Area Proposals.* The Commission tentatively concludes that it would not serve the public interest to split the D Block into one license for a high-population density area and a second license covering low-population density, rural areas, as Coverage Co. and Space Data request.[141]

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[135] *See* Appendix A.

[136] 47 U.S.C. 309(j)(3)(B); Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *First Report and Order,* 15 FCC Rcd 476, 500 para. 57 (2000).

[137] AT&T, Inc., (AT&T) Comments at 24–25; Verizon Wireless Comments at 29–31; Verizon Wireless Reply Comments at 11; Metro PCS Comments at 20; U.S. Cellular Comments at i, 15–16; Rural Telecommunications Group, Inc. (RTG) Comments at ii, 1; NTCH, Inc., (NTCH) Comments at 9–10; Testimony of William J. Andrle, Jr. Northrop Grumman Information Technology FCC *En Banc* Hearing, New York, July 30, 2008 at 2. Among the carriers offering nationwide service plans, who filed comments in this proceeding, only Sprint Nextel supports nationwide licensing. *See* Sprint Nextel Comments at 11.

[138] *See* Letter from Warren G. Lavey, on behalf of U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06–150, filed July 28, 2008, Attachment at 9 (suggesting that the Commission should set a minimum population threshold in determining if the auction results for the D Block should stand).

[139] *See, generally,* District Comments; *see also* Prepared Testimony of John J. Farmer, Former Attorney General, New Jersey; Senior Counsel, 9/11 Commission, at 3, FCC *En Banc* Hearing (July 30, 2008).

[140] *See* AT&T Reply Comments at 9 (arguing that, if the Public/Private Partnership is able to take advantage of the organizational structure already in place among the RPCs, ''the RPCs will facilitate interoperability and coordination between adjacent regions and public safety agencies, while ensuring that local public safety users have a voice in the design and functionality of the services offered over the network.'').

[141] Coverage Co. Comments at 2; Space Data Comments at 2, 13–15; Space Data Reply Comments at 2. Coverage Co. is a provider of software-defined radio (SDR) technology services and it claims that its technology would allow a commercial wireless network to operate on both CDMA and GSM systems. Coverage Co. Comments at 4–5. Space Data uses a ''balloon-based 'near space' communications system'' to provide ''wireless services in the South Central United States.'' Space Data Comments at 4.

Coverage Co. and Space Data's proposals do not specify the boundaries of the geographic areas that the two licenses would cover, which could present uncertainties for potential bidders and lead to disputes. In addition, there is a substantial question about the commercial viability of these two-license approaches. Coverage Co. and Space Data do not appear to argue, and the arguments they make do not demonstrate, that their two-license proposals are more commercially viable than the regional approach the Commission proposes. Also, the record does not indicate that commenters, other than Coverage Co. and Space Data, support these specific two-license proposals. Based on the record and the unique characteristics of this proceeding, such as the important obligations of the public/private partnership licensees, the Commission would need a stronger record, before deciding that it should adopt a geographic area licensing scheme that is significantly different from the schemes the Commission has employed in the past.[142]

75. Finally, the Commission tentatively concludes that it would not serve the public interest to offer license areas that are smaller than PSRs in the reauction of the D Block. Although the record indicates that some entities have an interest in the Commission assigning the D Block by offering 493 BTAs,[143] 176 EAs,[144] and 736 CMA licenses,[145] smaller license areas may make it more difficult to achieve nationwide interoperability. Assigning hundreds of smaller license areas could also exacerbate coordination issues that might arise among the D Block licensees, the Public Safety Broadband Licensee, and public safety agencies that would be involved with the policies and operation of the network. Moreover, license areas smaller than the PSRs might increase the possibility that some license blocks will not be sold in the reauction.

2. Requirements for the Shared Wireless Broadband Network

a. Spectrum Use Issues

(i) Combined Spectrum Use

76. *Background.* In the *Second Report and Order,* the Commission determined that promoting commercial investment in the build-out of a shared network infrastructure for both commercial and public safety users through the 700 MHz Public/Private Partnership would address ''the most significant obstacle to constructing a public safety network—the limited availability of public funding.'' [146] The Commission concluded that providing for a shared infrastructure using the D Block and the public safety broadband spectrum would help achieve significant cost efficiencies, allow public safety agencies to take advantage of off-the-shelf technology, provide the public safety community with access to an additional 10 megahertz of broadband spectrum during emergencies, and provide the most practical means of speeding deployment of a nationwide, interoperable, broadband network for public safety service by providing all of these benefits on a nationwide basis.[147] At the same time, the Commission pointed out that the 700 MHz Public/Private Partnership would provide the D Block licensee with rights to operate commercial services in the 10 megahertz of public safety broadband spectrum on a secondary, preemptible basis, which would both help to defray the costs of build-out and ensure that the spectrum is used efficiently.[148]

77. In the *Second FNPRM,* the Commission sought comment on whether, to provide the D Block licensee with appropriate flexibility to achieve an efficient and effective implementation of the 700 MHz Public/Private Partnership obligations, the Commission should amend the rules to clarify that the D Block licensee may construct and operate the shared wireless broadband network using the entire 20 megahertz of D Block spectrum and public safety broadband spectrum as a combined, blended resource.[149] In particular, the Commission sought comment on whether, in designing and operating the shared network, the 10 megahertz of D Block spectrum and the 10 megahertz of public safety broadband spectrum may be combined, in effect, into a single and integrated 20 megahertz pool of fungible spectrum.[150] This pool of spectrum could then be assigned to users without regard to whether a public safety user is being assigned frequencies in the D Block or a commercial user is being assigned frequencies in the public safety broadband spectrum.[151] These assignments would be permissible so long as the network provides commercial and public safety users with service that is consistent with the respective capacity and priority rights of the D Block license and Public Safety Broadband License and with the Commission rules.[152] The Commission sought comment on whether permitting the combined use of spectrum in this fashion would provide for a more efficient and effective use of spectrum.[153] The Commission also sought comment on whether such a combined use would be consistent with the different rights and obligations associated with the D Block license and the Public Safety Broadband License and whether it would be in the public interest to allow such use.[154] The Commission asked whether permitting such combined use would be consistent with the requirements of Sections 337(a) and (f) and the Commission rules allotting specific frequencies for use by the Public Safety Broadband Licensee and the D Block licensee.[155]

78. *Comments.* In response to *Second FNPRM,* the Commission received broad support for clarifying that the D Block licensee may construct and operate the shared wireless broadband network using the entire 20 megahertz of D Block spectrum and public safety broadband spectrum as a combined, blended resource.[156] These commenters note that allowing the combined flexible use of spectrum will promote efficient use of the spectrum and make the D Block license more commercially attractive

[142] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Twelfth Report,* 23 F.C.C.R. 2241, 2286 para. 97 (2008) (*Twelfth Report*).

[143] AT&T Comments at 24 (recommending EAs and CMAs as options for the geographic area license); Coleman Bazelon Comments at 24 (CMA licenses); RTG Comments at ii, 5 (requesting CMAs); Wirefree Comments at 12–14 (requesting CMAs); NTCH Comments at 11 (requesting BTAs); *see also,* In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, *Fifth Report,* FCC 08–88, 2008 WL 2404499 (rel. June 12, 2008), at para. 52 (indicating there are 493 BTAs).

[144] *See* ''Auction of 700 MHz Band Licenses Scheduled for January 16, 2008; Comment Sought on Competitive Bidding Procedures For Auction 73,'' *Public Notice,* FCC Rcd 15004 (WTB 2007) (indicating there are 176 EAs).

[145] See ''Auction of 700 MHz Band Licenses Scheduled for January 16, 2008; Comment Sought on Competitive Bidding Procedures For Auction 73,'' *Public Notice,* FCC Rcd 15004 (WTB 2007) (indicating there are 736 CMAs).

[146] *Second Report and Order,* 22 FCC Rcd at 15431 para. 396.

[147] *Id.*

[148] *Id.*

[149] *Second FNPRM, 23 FCC Rcd* at 8077 para. 80.

[150] *Id.*

[151] *Id.*

[152] *Id.*

[153] *Id.* at 8077 para. 81.

[154] *Id.*

[155] *Id.*

[156] ALU Comments at 8–9; Google Comments at 4–5; Ericsson Comments at 17, 24 n.56; Hypres Comments at 7; Motorola Comments at 10–11; SouthernLINC Reply Comments at 9–10. *But see* TE M/A–COM Comments at 8 (arguing against a combined network).

while facilitating priority access and preemption.[157] Supporters of this approach included members of the public safety community.[158] In addition, Google and Alcatel Lucent note that this approach is consistent with the Communications Act.[159]

79. *Discussion.* Based on the record, the Commission tentatively concludes that a D Block licensee may construct and operate the shared wireless broadband network using the entire 20 megahertz of D Block spectrum and public safety spectrum as a combined, blended resource. That 20 megahertz of spectrum may be assigned to users without regard to whether a public safety user is assigned frequencies in the D Block or a commercial user is assigned frequencies in the public safety broadband spectrum, so long as 50 percent of the capacity available from the combined 20 megahertz of spectrum is assigned to the public safety users and the other 50 percent to the commercial users, consistent with the respective capacity and priority rights of the D Block license and the Public Safety Broadband License and with the Commission rules.[160]

80. The Commission agrees with the commenters [161] who conclude that permitting the combined use of spectrum in this fashion provides for a more efficient and effective use of spectrum and provides further flexibility for a D Block licensee to use all available wireless broadband technologies to build and operate the network and thus promote the Commission's ultimate goal of making available a nationwide interoperable broadband network for public safety users. If given the flexibility of undivided spectrum, a D Block licensee can use the best available network management technologies to allocate and prioritize users efficiently across the full 20 megahertz of spectrum,[162] thereby increasing throughput and capacity over what can be achieved with two separate 10 megahertz networks.[163] Further, the Commission expects that by focusing its resources on a blended network design rather than a network that must carefully segregate different services into separate frequency bands, a D Block licensee should also be able to conserve costs. This improved flexibility, efficiency, and cost should make the license more attractive to potential bidders.[164]

(ii) Priority Public Safety Access to Commercial Spectrum During Emergencies

81. *Background.* In the *Second Report and Order,* the Commission required the D Block licensee to provide the Public Safety Broadband Licensee with priority access during emergencies to the spectrum associated with the D Block license (in addition to the 700 MHz public safety broadband spectrum).[165]

82. In the *Second FNPRM,* the Commission sought comment on whether the Commission should continue to require the D Block licensee to provide the Public Safety Broadband Licensee with priority access during emergencies to the spectrum associated with the D Block license.[166] The Commission invited comment on whether this obligation is essential to ensure that the network capacity will meet public safety wireless broadband needs.[167] The Commission asked, alternatively, whether removing the obligation could significantly improve the chances that this proceeding will succeed in achieving the Commission's goal of making available to public safety users a nationwide, interoperable, broadband network that incorporates the greater levels of availability, robustness, security, and other features required for public safety services.[168] The Commission sought further comment on whether, if the Commission continues to require that the D Block licensee provide the Public Safety Broadband Licensee with priority access during emergencies to the spectrum associated with the D Block license, the Commission should provide more clarity on the circumstances that would constitute an ''emergency'' for this purpose.[169]

83. *Comments.* In response to *Second FNPRM,* the Commission received comments generally supporting the idea of providing public safety entities with some additional spectrum capacity for emergency needs,[170] but parties diverged on the extent of such access. While the public safety community generally agrees that public safety users should have at least some priority access in emergencies to the spectrum associated with the D Block,[171] they are divided on whether geographic and time limits should be established.[172] PSST argues that ''public safety priority access during emergency situations should be limited to 70% of total network capacity [or 40% of the D Block capacity] and that public safety preemption rights should not exceed 50% of the network capacity.'' [173] APCO proposes avoiding the difficulties in defining the contours of emergency priority access by allowing both public safety and commercial users to take advantage of any available channels in the combined 20 megahertz spectrum when traffic is low, but restricting each set of users to 10 megahertz during periods of high traffic.[174] APCO argues that public safety users should have priority access to all 20 megahertz only in rare circumstances.[175] The Commission notes that several commenters suggest the possibility of using technology to dynamically prioritize signals throughout the network.[176]

84. Other commenters argue that unlimited emergency priority access to the capacity set aside for commercial use would undermine the commercial viability of the network and the success

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[157] *See* ALU Comments at 8; Google Comments at 4–5; Ericsson Comments at 24 n.56.

[158] NRPC Comments at 6; APCO Comments at 27.

[159] Google Comments at 4–5; ALU Comments at 8–9.

[160] *Second FNPRM,* 23 FCC Rcd at 8077, para. 80.

[161] ALU Comments at 8; Google Comments at 4–5; NRPC Comments at 6; Ericsson Comments at 17–18; Hypres Comments at 7; SouthernLINC Reply Comments at 9–10.

[162] *See* ALU Comments at 8.

[163] *See* Ericsson Comments at 17.

[164] *See* Google Comments at 4; SouthernLINC Reply Comments at 9–10.

[165] *Second Report and Order,* 22 FCC Rcd at 15441–42 paras. 426–27.

[166] *Second FNPRM,* 23 FCC Rcd at 8079, para. 85.

[167] *Id.*

[168] *Id.*

[169] *Id.* at 8079–80, para. 86.

[170] PSST Comments at 32; Seybold Comments at 2–3; RPC 33 Comments at 10; AASHTO Comments at 13; NATOA et al. Comments at iv; SDR Forum Comments at 10, 16; PGCC Comments at 12; Televate Comments at 11; NTCH Comments at 4; AT&T Reply Comments at 18; NPSTC Comments at 12; Ericsson Comments at 25; NATOA et al. Reply Comments at 11; Verizon Wireless Reply Comments at 7; *But see* Bazelon Comments at 1–2, 22 (arguing that a priority access requirement would inappropriately diminish the value of the D Block for commercial entities, thereby reducing the likelihood of a winning bid as well as proceeds to use to support a public safety network).

[171] PSST Comments at 32; Seybold Comments at 2–3; RPC 33 Comments at 10; AASHTO Comments at 13; NATOA et al. Comments at iv; SDR Forum Comments at 10, 16; PGCC Comments at 12; Televate Comments at 11; NTCH Comments at 4; AT&T Reply Comments at 18; NPSTC Comments at 12; Ericsson Comments at 25; NATOA et al. Reply Comments at 11; Verizon Wireless Reply Comments at 7; *But see* Bazelon Comments at 1–2, 22 (arguing that a priority access requirement would inappropriately diminish the value of the D Block for commercial entities, thereby reducing the likelihood of a winning bid as well as proceeds to use to support a public safety network).

[172] *See* RPC 33 Comments at 17–18 (supporting limitations); Wireless RERC Comments at 12 (same). *But see* AASHTO Comments at 12–13 (noting that any limitations could hinder safety operations in the event of an emergency).

[173] PSST Reply Comments at ii, 7–8. PSST stated in it initial comments that ''it is reasonable to limit priority access for public safety to 70% of overall network capacity of the SWBN, or just 40% of the D Block spectrum capacity.'' PSST Comments at 33.

[174] APCO Comments at 27–28. *But see* NATOA et al. Reply Comments at 11.

[175] APCO Comments at 27–28.

[176] SDR Forum Comments at 16, 25, 27; AT&T Comments at 13; NPSTC Comments at 47–48.

of the Public/Private Partnership.[177] AT&T and Alcatel-Lucent recommend that the Commission model that priority access after the Department of Homeland Security's Wireless Priority Service,[178] which allows government officials to contract with CMRS providers for priority telecommunications services.[179] With regard to geographic limitations, Ericsson argues ''that priority access should be limited to specific geographic areas affected by serious emergencies, to avoid jeopardizing the commercial viability of the 700 MHz Public/Private Partnership, and that priority access should be properly limited to the area directly affected by the emergency.'' [180] As to bandwidth limitations, some propose that at least 50 percent of the capacity be prioritized for public safety use.[181]

85. Several commenters also argue that the Commission should define the specific circumstances that constitute an ''emergency'' before conducting an auction,[182] suggesting several methods to achieve this goal. Others argue that the parties should decide this issue for themselves,[183] and one commenter argues that emergencies should be declared only by senior levels of state or local government.[184] Some commenters agree that the specific situations listed in the *Second FNPRM* [185] could be considered an emergency.[186]

86. *Discussion.* Based on the record, the Commission tentatively concludes that emergency access to the D Block commercial capacity should be mandated only in the event of an ''emergency,'' as that term was defined in the *Second FNPRM,* specifically:

- The declaration of a state of emergency by the President or a state governor.
- The issuance of an evacuation order by the President or a state governor impacting areas of significant scope.
- The issuance by the National Weather Service of a hurricane or flood warning likely to impact a significant area.
- The occurrence of other major natural disasters, such as tornado strikes, tsunamis, earthquakes, or pandemics.
- The occurrence of manmade disasters or acts of terrorism of a substantial nature.
- The occurrence of power outages of significant duration and scope.
- The elevation of the national threat level to either orange or red for any portion of the United States, or the elevation of the threat level in the airline sector or any portion thereof, to red.

87. The Commission tentatively concludes that for the first two conditions and when the national or airline sector threat is set to red, the D Block licensee(s) must provide public safety users priority access [187] to, but not preemptive use of, up to 40 percent of the commercial D Block spectrum capacity (*i.e.*, 2 megahertz in each of the uplink and downlink blocks), assuming the full public safety broadband block spectrum capacity is being used, for an aggregate total of 14 megahertz of overall network capacity.[188] For all other emergencies listed above, the D Block licensee(s) must provide priority access to, but not preemptive use of, up to 20 percent of the commercial spectrum capacity (*i.e.*, 1 megahertz in each of the uplink and downlink blocks). Furthermore, under either scenario, the right to emergency-based priority access must be limited to the time and geographic scope of the emergency. To trigger emergency-based priority access, the PSBL will request, on behalf of the impacted public safety agencies, that the D Block licensee provide such access. Priority access requests initiated by the PSBL will cover a 24-hour time period, and must be reinitiated by the PSBL for each 24-hour time period thereafter that the priority access is required. In the event that the D Block licensee and the PSBL do not agree that an emergency has taken place, the PSBL may ask the Defense Commissioner to resolve the dispute.

88. The Commission expects that the instances under which emergency-based priority access would be triggered under the definition the Commission tentatively proposes above will be relatively infrequent. Moreover, the Commission agrees generally with APCO that through responsible capacity management that permits public safety user groups to prioritize their regional and local use of the shared wireless broadband network, and which is embedded into the network prior to deployment, it will be possible to provide critical services using no more than the ten megahertz public safety portion of the shared wireless broadband network under virtually all but the rarest of circumstances.[189] At

[177] Leap Wireless Comments at 13–14 (arguing argues that public safety users should be allowed priority access to only 50% of available network capacity, ''with no other preemption requirements on the network''); Verizon Wireless Comments at 9 (''providing priority access to public safety users on a preemptive basis reduces the value of the network to their commercial counterparts''); Motorola Comments at 8; *but see* Sprint Nextel Comments at 14–15 (proposing that the D Block auction winner offer ''near real-time prioritization,'' under which the D Block licensee moves ''all commercial traffic off network within ten minutes of receiving a call from authorized public safety officials'') *But see* Verizon Wireless Reply Comments at 7 (noting that reducing priority access to 50% of the network ''would frustrate the very purpose of building a new dedicated public safety network.'').

[178] *See http://wps.ncs.gov/.*

[179] AT&T Comments at 13; *see also* ALU Comments at 9–10; AT&T Reply Comments at 18 n.59.

[180] Ericsson Comments at 23.

[181] Motorola Comments at 10. Ericsson further argues that ''the priority access and preemption for public safety can be applied on the entire 20 MHz'' and that ''3GPP standards provide automatic methods for providing such priority access and preemption.'' Ericsson Comments at 24. *But see* CEA Comments at 3 (''the Commission should limit public safety's priority access to D Block spectrum in emergencies to 50 percent of the commercial D Block capacity.'')

[182] *See* AT&T Comments at 13; Qualcomm Comments at 10–11; Google Comments at 6–7; NRPC Comments at 9–10; Bazelon Comments at 1; Wireless RERC Comments at 11; APCO Comments at 26. *But see* Leap Wireless Comments at 13–14. RPC 33 proposes that an emergency exists anytime lives or ''significant property'' is at risk, but that the decision should be made locally, rather than by a national board. RPC 33 Comments at 17.

[183] Qualcomm Comments at 10–11. Televate similarly argues that commercial bidders should submit before the auction proposals that state under what conditions they will allow priority access to their networks. Televate Comments at 11. NPSTC agrees that the Commission should define certain circumstances that would constitute an emergency ''after consultation with the PSBL and D Block licensee, and in circumstances the PSBL has defined and Commission approves prior to the D Block auction.'' NPSTC Comments at 12–13.

[184] NPSTC Comments at 12–13.

[185] *See Second FNPRM,* 23 FCC Rcd at 8079–80 para. 86.

[186] Ericsson Comments at 23–24; California Comments at 6. The Wireless RERC urges, however, that the terms ''significant'' and ''substantial,'' as used in the *Second FNPRM,* be further clarified or deleted from the descriptions of those situations. Wireless RERC Comments at 12.

[187] To be clear, by ''priority access,'' the Commission mean that the public safety user would be assigned the next available channel over a commercial user—*i.e.*, the public safety user would be placed at the top of the queue—and would not preempt a commercial call in progress.

[188] *See* PSST Comments at iii, 16 n.28, 33 (explaining that ''it is reasonable to limit priority access for public safety to 70% of overall network capacity of the SWBN, or just 40% of the D Block spectrum capacity.''); PSST Reply Comments at ii (''public safety priority access during emergency situations should be limited to 70% of total network capacity and that public safety preemption rights should not exceed 50% of the network capacity.'').

[189] *See* APCO Comments at 28–29. APCO recommended that in circumstances under which ''sector loading increases and service contention starts to occur, there [should be] a[n] immediate transition to a hard partition state'' where commercial and public safety use of the shared wireless broadband network would revert to 50% of the paired spectrum (*i.e.*, where commercial users accessed only the ten megahertz of D Block spectrum and public safety users accessed only the ten megahertz of public safety broadband spectrum). The only instances in which this ''hard partition'' would be removed, allowing public safety users priority access some portion of the commercial D Block spectrum, would be pursuant to Presidential Order or ''by any other existing means where government can seize control of

Continued

the same time, the Commission proposed approach should continue to guarantee additional network capacity to meet public safety wireless broadband needs in the most serious emergencies. The Commission notes, for example, that both of the circumstances cited by the PSST—the events of September 11, 2001, and Hurricane Katrina—would have met the standard the Commission proposes. [190]

89. In light of the fact that the Commission expects public safety use of the priority access mechanism to be infrequent, the Commission believes it should not require public safety users of priority access to pay an additional charge to the D Block licensee for such use over and above the basic monthly service charge discussed elsewhere in this *Third FNPRM.* Although the Commission stated in the *Second Report and Order* that separate fees for priority access could be specified in the NSA,[191] it did so based on a broader definition of priority access than the one the Commission proposes now. For example, the *Second Report and Order* permitted public safety preemption of ongoing commercial traffic,[192] which the Commission would no longer allow. The Commission also proposed more specific criteria for defining emergencies that would trigger priority access rights and limitations on the duration of priority access. The Commission therefore seeks comment on its view that separate fees for priority access should not be allowed, or whether a separate fee structure would be appropriate to ensure that the D Block licensee can recover its costs for providing priority access.

90. The Commission also expects that the Commission proposed approach will significantly improve the chances that this proceeding will succeed in achieving the Commission's goal of making a nationwide, interoperable, broadband network available to public safety users. The Commission appreciates that, to be viable, the commercial services offered on the D Block spectrum must be competitive with other commercial mobile services. Commercial viability could be adversely impacted if users of a D Block licensee's commercial services perceive that their service may be preempted or unavailable at the times when they most need to use it, while competing providers offer uninterrupted services. In clarifying the circumstances that would constitute an emergency, requiring priority access rather than preemption, and providing that only a portion of the commercial capacity will be subject to public safety priority access even in emergencies, the Commission seeks to minimize any diminution of the commercial value of the D Block spectrum. The Commission tentatively finds that this approach offers the best opportunity to create a commercially viable network that can satisfy the demands of public safety users. The Commission seeks comment on this approach.

91. *Commercial Operations in the Public Safety Spectrum on a Secondary Basis.* While the Commission proposes to modify the rules governing public safety's emergency access to commercial spectrum, the Commission tentatively concludes that the Commission's rules for commercial access to public safety spectrum should remain the same, subject to the Commission's clarification regarding combined/blended use. As the Commission explains below, the spectrum access permitted here and the conditions placed on the use of the spectrum are designed to ensure that any commercial use does not undermine the ''principal purpose'' of the services provided in this band ''to protect the safety of life, health, or property,'' as required by Section 337.[193] And as the Commission determined in the *Second Report and Order,* commercial operations on a secondary, preemptible basis will maximize the efficient use of the spectrum by permitting full use of the public safety broadband spectrum.[194] Further, providing the D Block licensee with the opportunity to offer commercial services on this spectrum, on a secondary basis, is an integral part of a viable framework for enabling the 700 MHz Public/Private Partnership to finance the construction of a nationwide, interoperable public safety broadband network.

(iii) Consistency With Section 337 of the Communications Act

92. *Background.* Section 337 of the Communications Act, as amended, required the Commission to allocate, from the 746–806 MHz Band, 24 megahertz for public safety services and 36 megahertz for ''commercial use to be assigned by competitive bidding pursuant to section 309(j).'' [195] Some commenters suggest that rules that would permit public safety use of spectrum allocated for commercial use or commercial use of public safety spectrum on a secondary basis would violate these requirements.[196]

93. *Discussion.* In the *Second Report and Order,* the Commission analyzed whether the 700 MHz Public/Private Partnership rules regarding the use of spectrum by the shared wireless broadband network were consistent with Section 337.[197] The Commission found that Section 337(a)(1), requiring 24 megahertz for ''public safety services,'' does not prohibit us from permitting commercial operations on a secondary basis to the 10 megahertz of the 700 MHz public safety spectrum to facilitate the build-out of a public safety network.[198] The Commission further found that Section 337(a)(2), which directs us to allocate 36 megahertz ''for commercial use,'' does not prohibit us from requiring the D Block licensee to provide public safety users with priority access to D Block license spectrum in an ''emergency.'' [199] The Commission continues to find the Commission's analysis of these issues in the *Second Report and Order,* persuasive. Further, because the Commission is not proposing to modify the rules regarding secondary commercial use of the public safety spectrum, the Commission's reasoning and conclusions in the *Second Report and Order,* regarding such use apply to the Commission's secondary use proposal here as well. While the Commission does propose to modify public safety access to commercial spectrum in emergencies, such modifications would only reduce or clarify the scope of the emergency access. Because the Commission's conclusion in the *Second Report and Order,* that such access was consistent with Section 337 rested in part on a finding that ''emergency access to commercial spectrum would be triggered only in rare circumstances,'' the Commission finds that the reasoning and conclusion applies even more strongly to the proposed emergency access rules. Accordingly, consistent with the *Second Report and Order's,*

commercial assets—a situation that rarely occurs, and would not be a specific impact to the [National Broadband Network] any more than any other commercial asset.'' APCO Comments at 27.

[190] PSST Comments at 33. *See* ''Declaration of National Emergency by Reason of Certain Terrorist Attacks,'' *http://www.whitehouse.gov/news/releases/2001/09/20010914–4.html.*

[191] *Second Report and Order,* 22 FCC Rcd at 15448 ¶ 450.

[192] *Id.* at 15442 ¶ 428.

[193] 47 U.S.C. 337(a)(1), (f)(1)(A).

[194] *Second Report and Order,* 22 FCC Rcd at 15437–38, para. 416.

[195] 47 U.S.C. 337(a).

[196] *See, e.g.,* MetroPCS Comments at 14–16.

[197] *See Second Report and Order,* 22 FCC Rcd at 15436–43 paras. 412–430.

[198] *See id.* at 15437–41 paras. 413–25.

[199] *See id.* at 15442 para. 429. The Commission also found that imposing the 700 MHz Public/Private Partnership condition on the D Block did not prevent us from auctioning the license and was therefore consistent with the mandate under Section 337 that the spectrum be auctioned pursuant to Section 309(j). *See id.* at 15442–43 para. 430.

reasoning and conclusions, the Commission concludes that the Commission's proposals regarding commercial use of public safety spectrum on a secondary, preemptible basis and public safety priority use of commercial spectrum capacity are consistent with the requirements of Section 337.

94. The Commission finds that the Commission's proposal to permit the D Block licensee to construct and operate the shared wireless broadband network using the entire 20 megahertz of D Block spectrum and public safety spectrum as a combined, blended resource is also consistent with Section 337. The Commission notes that Section 337(a)(1) provides us the authority to allocate 24 megahertz for public safety services ''according to the terms and conditions established by the Commission.'' [200] The Commission has stated previously that ''this phrase * * * afford[s] us broad discretion to impose conditions on the use of this spectrum to effectuate its optimal use by public safety * * * .'' [201] The Commission concludes that permitting a blended use approach does in fact serve this purpose, given the Commission's finding above that blended use can provide a more efficient and effective use of the combined spectrum resource and thus promote the Commission's ultimate goal of making available an interoperable broadband network for public safety users nationwide. Indeed, given the Commission's conclusion that a 700 MHz network providing for shared use of commercial and public safety spectrum is itself legally permissible, the Commission finds it unlikely that Congress intended to preclude an efficient implementation of such sharing. The Commission emphasizes that, under a blended use approach, public safety users will still be guaranteed priority access to 10 megahertz of 700 MHz spectrum at all times consistent with the capacity to which they are entitled under the public safety broadband license. The blended use approach does not deprive either commercial or public safety users of the spectrum capacity that Congress directed to be allocated for their use, and is thus consistent with both the purpose and text of the statute.

b. Technical Requirements of the Shared Wireless Broadband Network

95. *Background.* In the *Second Report and Order,* the Commission found that, to ensure a successful public/private partnership between the D Block licensee and the Public Safety Broadband Licensee, with a shared nationwide interoperable broadband network infrastructure that meets the needs of public safety, the Commission must adopt certain technical network requirements.[202] Accordingly, among other requirements, the Commission mandated that the network incorporate the following technical specifications:

- Specifications for a broadband technology platform that provides mobile voice, video, and data capability that is seamlessly interoperable across agencies, jurisdictions, and geographic areas. The platform should also include current and evolving state-of-the-art technologies reasonably made available in the commercial marketplace with features beneficial to the public safety community (*e.g.*, increased bandwidth).
- Sufficient signal coverage to ensure reliable operation throughout the service area consistent with typical public safety communications systems (*i.e.*, 99.7 percent or better reliability).
- Sufficient robustness to meet the reliability and performance requirements of public safety. To meet this standard, network specifications must include features such as hardening of transmission facilities and antenna towers to withstand harsh weather and disaster conditions, and backup power sufficient to maintain operations for an extended period of time.
- Sufficient capacity to meet the needs of public safety, particularly during emergency and disaster situations, so that public safety applications are not degraded (*i.e.*, increased blockage rates and/or transmission times or reduced data speeds) during periods of heavy usage. In considering this requirement, the Commission expects the network to employ spectrum efficient techniques, such as frequency reuse and sectorized or adaptive antennas.
- Security and encryption consistent with state-of-the-art technologies.[203]

96. The Commission required that the parties determine more specifically what these technical specifications would be and implement them through the NSA. In addition, the Commission required that the parties determine and implement other detailed specifications of the network that the D Block licensee would construct.[204] The Commission determined that allowing the parties to specify details, including the technologies that would be used, subject to approval by the Commission, would provide the parties with flexibility to evaluate the cost and performance of all available solutions while ensuring that the shared wireless broadband network has all the capabilities and attributes needed for a public safety broadband network.[205]

97. In the *Second FNPRM,* the Commission sought comment on whether the Commission should clarify or modify any aspect of the technical network requirements adopted in the *Second Report and Order* or otherwise establish with more detail the technical requirements of the network.[206] To guide the discussion and enable more focused comment, the Commission attached as an appendix a possible technical framework (Technical Appendix) that identified in greater detail potential technical parameters for the shared wireless broadband network. The Commission sought detailed comment on the Technical Appendix.

98. The Commission also sought comment on whether any changes to requirements were needed to reflect the practical differences between the architecture of traditional local wireless public safety systems and the architecture of nationwide commercial broadband network systems.[207] Conversely, the Commission sought comment on whether to require national standardization in the implementation of the network requirements, and the extent to which national standardization would help the network to achieve efficiency and economies of scale and scope.[208]

99. Further, the Commission sought comments on other specifications the Commission required of the network, including:

- A mechanism to automatically prioritize public safety communications over commercial uses on a real-time basis and to assign the highest priority to communications involving safety of life and property and homeland security consistent with the requirements adopted in the *Second Report and Order*;
- Operational capabilities consistent with features and requirements specified by the Public Safety Broadband Licensee that are typical of current and evolving state-of-the-art public safety systems (such as connection to the PSTN, push-to-talk, one-to-one and one-to-many communications, etc.);

[200] 47 U.S.C. 337(a)(1).

[201] *Second Report and Order,* 22 FCC Rcd at 14339 para. 419.

[202] *Second Report and Order,* 22 FCC Rcd at 15433 para. 405.

[203] *Id.*

[204] *Id.* at 15434 para. 406.

[205] *Id.* at 15426 para. 383.

[206] *Second FNPRM,* 23 FCC Rcd at 8071 para. 61.

[207] *Second FNPRM,* 23 FCC Rcd at 8072 para. 64.

[208] *Second FNPRM,* 23 FCC Rcd at 8072 para. 64.

• Operational control of the network by the Public Safety Broadband Licensee to the extent necessary to ensure public safety requirements are met; and

• A requirement to make available at least one handset that would be suitable for public safety use and include an integrated satellite solution, rendering the handset capable of operating both on the 700 MHz public safety spectrum and on satellite frequencies.[209]

100. The Commission sought comment on whether the Commission should itself establish, in a detailed and comprehensive fashion, the technical obligations of the D Block licensee with regard to the network, and if so, what specifications it should adopt. The Commission sought comment on whether the technical framework set forth in the Technical Appendix could, following comment on its specific components, help establish an appropriate set of requirements for the shared wireless broadband network.[210] The Commission also sought comment on a number of particular technical issues.[211]

101. The majority of commenters argue that the Commission should provide more specificity regarding technical network requirements. APCO, for example, recommends that ''all steps be taken to either pre-define or eliminate as many negotiating points of the NSA as possible.'' [212] AT&T states that the Commission must ''clarify the key requirements for the public safety network and the rights and responsibilities for all parties to the Public/Private Partnership * * *''and that making such clarifications will ''inform commercial entities about potential risks, benefits, and required amounts of financial investment, which will enable commercial entities to evaluate the commercial viability of the Public/Private Partnership.'' [213] The PSST agrees that ''a substantially more detailed list of technical specifications should be developed in advance of the D Block re-auction.'' [214] It states that, on balance, ''the benefit of greater certainty for prospective bidders outweighs the natural inclination of parties to maintain maximum flexibility during a negotiation process, particularly one of such complexity and economic significance.'' [215] The PSST provides proposed rules that include detailed technical requirements for the shared wireless broadband network.[216]

102. *Discussion.* The Commission notes that several technical issues, such as network coverage, prioritization of services, and operational control of the network are addressed elsewhere in this notice. In this section, the Commission specifically addresses requirements pertaining to: the broadband technology platform; interoperability; availability, robustness and hardening of the network; capacity, throughput and quality of service; security and encryption; power limits/power flux density limits/related notification and coordination requirements; and the satellite-capable handset requirement.

103. Based on the record developed in this proceeding, the Commission tentatively concludes that the Commission should establish more detailed technical requirements for the shared wireless broadband network. The Commission tentatively concludes that this approach will provide additional certainty regarding the obligations of the D Block licensee(s) and the costs of the shared wireless broadband network. The Commission anticipates that specifying the technical requirements as completely as possible at this time, and reducing the issues that will be left to post auction negotiation, will provide greater assurance to potential bidders regarding the commercial viability of the shared wireless broadband network while ensuring that the network meets public safety's needs.[217] Thus, the Commission tentatively concludes that the detailed technical requirements the Commission proposes to adopt as described herein would best serve the Commission's goal of making a broadband, interoperable network available on a nationwide basis to public safety entities. The Commission seeks comment on these tentative conclusions.

104. As noted earlier, a number of commercial interests assert that the costs associated with deploying a shared network designed to public safety specifications would exceed those of typical commercial networks and would directly impact the commercial viability of the network.[218] They maintain that simply building another commercial grade network will be inadequate to meet public safety needs, and that it is imperative that the wireless broadband network be designed to meet the performance requirements of public safety and to provide the necessary features and applications so that public safety can effectively discharge their duties. Many of the commenters from the public safety community argue that public safety's requirements must not be diminished in order to make the shared wireless broadband network commercially viable. Motorola suggests that it is not possible to balance the interests of public safety and commercial service providers and that additional funding from the Federal government is required to make the combined network successful.[219] APCO supports the development of a national, interoperable, broadband network that is designed, maintained, and operated to meet the requirements of public safety, but recognizes that some compromises regarding public safety requirements may be necessary to attract a private sector partner through the D Block auction.[220] In developing the Commission proposed technical rules, the Commission has attempted to balance public safety's requirements with the capabilities that may be commercially viable based on the record in this proceeding. The proposed technical requirements take into account the detailed technical requirements proposed by the PSST and comments filed in response to the *Second FNPRM* and Technical Appendix.

105. *Broadband Technology Platform.* Many commenters argue that the Commission should adopt guidelines specifying that the joint network must be built with state-of-the-art, commercially available, standards-based technology.[221] For example, AT&T argues that the baseline guidelines should be sufficiently flexible to permit the use of existing commercial technology, where such components meet public safety's capability requirements.[222] The Commission agrees with commenters that maximizing the use of commercially available technology can substantially increase the speed and decrease the cost of deployment of the network.[223] In

[209] *Second Report and Order,,* 22 FCC Rcd. at 15433–34 para. 405.

[210] *Second FNPRM,* 23 FCC Rcd at 8074 para. 70.

[211] *Second FNPRM,* 23 FCC Rcd at 8074–79 paras. 71–83.

[212] APCO Comments at 26.

[213] AT&T Comments at 9.

[214] PSST Comments at 29.

[215] PSST Comments at 29.

[216] Addendum to PSST Comments.

[217] The Commission has appended an NSA term sheet, which provides a summary of major terms that the parties must include in their agreement(s). *See, supra,* Appendix D.

[218] AT&T Comments at 2; MetroPCS Comments at 5; Motorola Comments at 7–9; Sprint Nextel Comments at 13; VerizonWireless Comments at 3.

[219] Motorola Comments at 7.

[220] APCO Comments at 6.

[221] *See* PSST Comments, Attachment C at 2; AT&T Reply Comments at 18 (citing Ericsson Comments at 9–15; Interisle Comments at 11; Motorola Comments at 7; NATOA Comments at 9 and Technical Report Attachment; Northrop Grumman Comments at 6–7; Qualcomm Comments at 8–10; Verizon Wireless Comments at 16–18; Wireless RERC Comments at 7–8).

[222] AT&T Reply Comments at 18.

[223] AT&T Reply Comments at 18; AT&T Comments at 10; Ericsson Comments at 14–15;

addition, it is also likely to significantly reduce the costs of end user devices for first responders. Moreover, by permitting the leveraging of existing commercial network infrastructure, the shared wireless broadband network will be able to be built out more efficiently, thus making participation in the Partnership more attractive to commercial entities.[224] Thus, based on these considerations, the Commission tentatively concludes that the network should utilize standardized commercial technologies. The Commission further proposes that the broadband platform must be IP-based and should also include current and evolving state-of-the-art technologies reasonably made available in the commercial marketplace with features beneficial to the public safety community.

106. The Commission tentatively concludes that the shared wireless broadband network must provide for fixed and mobile voice, video, and data capability. Some parties indicate that certain applications, such as fixed video surveillance and fixed point-to-point and point-to-multipoint services, could use substantial capacity in the network and should use other spectrum. Alcatel-Lucent notes, for example, that ''because video is likely the public safety application with the highest data rate requirements, care must be taken to ensure that support of video across the service area provide public safety with mission-critical operational capabilities without compromising the economic viability of the public/private partnership.'' [225] Stagg Newman argues that applications such as streaming video could consume much of the capacity of a network and would have a dramatic effect on the cost of the network.[226] Other commenters, such as Tyco Electronics, argue that the Commission should ''afford public safety agencies maximum flexibility in the use of D Block Spectrum.'' [227] The Commission appreciates the concern that certain applications could have a significant impact on network design and costs. However, the Commission finds that any effort to prohibit certain types of applications would be counterproductive to encouraging development and use of the shared wireless broadband network. The Commission notes that emerging networks and technologies are capable of accommodating a wide variety of services. The Commission expects that the operators and users of the shared wireless broadband network will make reasonable judgments as to the applications that will run on the network and will adapt the network to meet evolving requirements. The Commission invites comment on this tentative conclusion.

107. The Commission notes that a variety of commenters—including public safety and commercial entities—assert that the D Block licensee should take the lead role in choosing the underlying technology of the network, in cooperation with the Public Safety Broadband Licensee and according to minimum specifications set by the Commission.[228] The Commission disagrees with commenters who argue that the Commission should make a specific choice of technology. In view of these commenters' differing opinions regarding the most appropriate technology,[229] there does not appear to be a basis for a determination regarding the viability of any particular technology for shared network at this time. Thus, the Commission tentatively concludes that the public interest would be better served by allowing certain flexibility to parties interested in the D Block to make a determination regarding the technology for the network.

108. The Commission tentatively concludes, however, that the shared wireless broadband network must use a common air interface to ensure nationwide interoperability as discussed elsewhere in this notice. The Commission proposes that the air interface be selected in a manner that provides interested parties as much flexibility and control as possible in the choice, and with the ability to bid on a license with the confidence regarding what technology will be applicable. The Commission notes that the record supports a conclusion that two next generation technologies in particular, WiMAX and LTE, provide the most likely options to provide the necessary broadband level of wireless service to public safety entities.[230] In light of these goals and observations, the Commission proposes to adopt two approaches with regard to determining the common broadband technology, tailored to whether the Commission assigns a nationwide licensee or regional licensees. In the event of a nationwide licensee, because there is no concern that different entities will seek to adopt different broadband radio access network technologies, the Commission proposes to allow the D Block license winner complete authority and discretion to choose its broadband technology after winning the license. In the event of regional licensees, however, the Commission finds that permitting them to choose their own technology would run an unacceptable risk of the licensees choosing different technologies, or being otherwise unable to agree on a technology. Further, the Commission recognizes that it would be problematic for the Commission itself to establish a common technology post-auction, as parties will likely consider the broadband technology a critical element of their business plans and an important factor in determining whether to bid for a license. Accordingly, to enable the selection of a single broadband technology standard that will apply to all regional licensees, the Commission proposes to use the auctions process itself. More specifically, the Commission tentatively concludes that the Commission will offer three alternative sets of licenses: regional licenses conditioned on the use of WiMAX technology and regional licenses conditioned on the use of LTE technology, as well as the third set of a single nationwide license. The bidder(s) for the set covering the greatest aggregate population at the close of bidding (with ties between sets broken by which of the tied sets received the highest gross bids in the aggregate) will become the provisionally winning bidder(s) and determine whether the Commission will grant the nationwide license, the WiMAX PSR licenses, or the LTE PSR licenses, subject to post-bidding application of a minimum sale requirement and all other conditions of the licensing process established by Commission rules, including those specific to the D Block. The Commission

Verizon Wireless Comments at 16–18; AT&T Reply Comments at 18.

[224] AT&T Reply Comments at 18–19.

[225] ALU Comments at 6.

[226] *See, e.g.*, Testimony of Stagg Newman, Public Hearing on Public Safety Interoperable Communications—The 700 MHz Band Proceeding, Federal Communications Commission, July 30, 2008, at 2, *http://www.fcc.gov/realaudio/presentations/2008/073008/newman.pdf*. (estimating that increase in cell edge speed from 300 kbps/75 kbps downlink/uplink to 1.2 Mbps/512 kbps downlink/uplink, combined with a requirement of inbuilding coverage, would require 2 to 4 times the number of cellsites, at a construction cost of $200,000 to $500,000 and annual operating cost of $50,000 to $100,000 for each cellsite).

[227] Tyco Comments at 7.

[228] AT&T Reply Comments at 18 (citing Leap Wireless Comments at 12–13; NPSTC Comments at 39; NTCH Comments at 7; RPC Comments at 13–14; Comments of Wirefree Partners III, LLC at 14–15).

[229] *See* Comcentric Comments at 5; Qualcomm Comments at 8; MSV Comments at 21; MSUA Comments at 22; Space Data Corp. Comments at 8–9; SDR Comments at 23–24; Ericsson Comments at 10, 13–14.

[230] *See, e.g.*, InterIsle Comments at 2 (''there is much to be gained by leveraging CMRS technology on behalf of Public Safety users. Technologies such as WiMAX and especially LTE are very promising * * * .'').

discusses this process in greater detail elsewhere in this Third FNPRM. The Commission seeks comment on the Commission's proposed determinations regarding the radio access technology platform for the shared network.

109. The Commission is cognizant that wireless broadband networks have already been deployed in the 700 MHz public safety spectrum in certain areas. The Commission does not wish to disrupt existing operations that represent substantial investments and are working well to serve local public needs. The Commission invites comment as to what steps, if any, should be taken with regard to such systems that may ultimately not be compatible with the nationwide shared wireless broadband network technology. For example, should the Commission require use or availability of multi-band radios that could be available to public safety first responders that may need to come into these areas in times of emergency? If so, how could this be implemented and in what timeframe?

110. *Interoperability*. The Commission tentatively concludes that that the network must provide voice, video, and data capabilities that are interoperable across agencies, jurisdictions, and geographic areas. By interoperable, the Commission means that the technology, equipment, applications, and frequencies employed will allow all participating public safety entities, whether on the same network or on different regional 700 MHz public safety broadband networks, to communicate with one another regardless of whether they are communicating from their home networks or have roamed on to another regional network. To achieve this level of interoperability, the Commission tentatively concludes that, as discussed in detail above, the shared wireless broadband network must use a common air interface.[231] The Commission takes note that certain parties assert that a nationwide common air interface is not necessary because most interoperability is conducted locally. However, in times of a crisis public safety agencies often provide assistance far beyond their typical areas of operation. The Commission recognizes that one solution is for the local public safety agencies to supply compatible equipment to public safety agencies that are coming from another area to provide assistance. Such an approach has significant drawbacks because it requires a significant supply of extra equipment at additional expense. The Commission also notes arguments that multiple air interfaces could be accommodated through the use of handsets that can operate over multiple broadband air-interfaces or through use of software defined radios, particularly at base stations. The Commission is concerned, however, that such equipment comes at additional expense that would be borne by all public safety users. It is also not clear from the record when handsets able to work over all the broadband platforms chosen by the various licensees would be available. Further, if these multi-mode handsets were produced solely to serve the public safety broadband networks, the Public Safety Broadband Licensee would have less opportunity to equip first responders with off-the-shelf handsets that could be obtained at significantly less cost than customized public safety user devices. The Commission solicits comment on the Commission's tentative conclusion that selection of a single air interface is necessary to ensure nationwide interoperability.

111. As discussed elsewhere, to achieve interoperability with respect to the geographic area option of PSRs, the Commission tentatively concludes that the Commission will offer at auction alternative sets of PSRs, each conditioned on the licensees' use of a particular technology platform. The Commission further tentatively concludes that, in the event that there are multiple D Block licensees, each regional D Block license winner should be required to enter into arrangements both with the other D Block license winners and with the Public Safety Broadband Licensee as necessary to ensure interoperability between networks. The Commission proposes that such arrangements provide, at a minimum, that each D Block licensee will provide the ability to roam on its network to public safety users of all other 700 MHz public safety broadband networks.[232] The Commission further proposes that the NSA of each regional D Block licensee must specify that the licensee will provide public safety users of all other 700 MHz public safety regional networks with the ability to roam on its network, and should specify the relevant terms and conditions under which roaming is provided. However, to ensure that the broadband network supports public safety interoperability, the Commission proposes that D Block licensees should not be permitted to assess special roaming charges (over and above service fees charged for in-region use) in cases where public safety users require roaming for mutual aid or emergencies.

112. A number of commenters suggest that further clarity is needed with regard to the role of the shared wireless broadband network relative to interoperability with existing public safety networks. For example, some parties question whether the shared network was to be used for ensuring interoperability with existing legacy public safety voice systems or just for users of this spectrum. APCO notes that, while the shared network will have capabilities for voice, data and video systems, existing public safety systems will be used well into the future.[233] The Commission observes that considerable work has been done and is under way to ensure interoperability among existing public safety communications systems.

113. The Commission expects that the shared wireless broadband network will ensure interoperability in a variety of ways. All public safety users that opt to use the shared wireless broadband network will have the capability to be interoperable because they will be using a common air interface. As a result, radios could be taken from one jurisdiction to another, such as occurs for disaster relief, and will have the ability to communicate with other public safety users in that area. Moreover, multi-band radios could be developed, although at some cost premium, that are capable of operating on both the shared wireless broadband network and other public safety frequency bands.

114. The shared wireless broadband network could also be integrated with other public safety communications systems via gateways and bridges, as already occurs for existing public safety systems operating across multiple frequency bands. In this regard, the Commission believes it is important that the Commission ensures that the shared wireless broadband network have the technical capability to support interconnection with public safety operations in public safety frequency bands other than the 700 MHz public safety spectrum broadband allocation.[234] Specifically, the Commission means to provide public safety with the opportunity to interconnect existing voice-based public safety communications systems operating in VHF, UHF, and

[231] *See, e.g.*, NYPD Comments at 10 (''Regional interoperability can be achieved by adapting a common air interface and operating on a common frequency band.'').

[232] The Commission does not, however, propose to require that such roaming arrangements extend to commercial services.

[233] APCO Comments at 10.

[234] The Commission intends to include voice service presently conducted on VHF, UHF.

narrowband 700 MHz and 800 MHz bands with the shared network(s). The Commission therefore proposes to require the D Block licensee(s) to publish IP-based specifications enabling public safety operations in other frequency bands to access the shared broadband network(s) via bridges and/or gateways. The Commission further tentatively concludes to require the Upper 700 MHz D Block licensee to offer gateway-based access to the shared network(s) for a standard charge per user (meaning per public safety officer/individual), and propose that a fee of $7.50 per month may serve as an appropriate amount.[235] As seen in Table 1, the Commission bases this proposed fee on the Commission's survey of monthly rates for services approximating land mobile radio—including ''walkie-talkie'' and push-to-talk service—that are add-ons to basic monthly service plans and offered under standard government contracts to public safety users. The Commission also proposes that public safety users themselves bear the costs of the bridges and gateways, including installation and maintenance costs, because such equipment would essentially serve as an extension of existing public safety systems. Parties who suggest that the costs of gateways or bridges should be shared between the D Block licensee and the Public Safety Broadband Licensee should provide specific information as to the costs involved, rationale for sharing these costs, and formula for sharing the costs. The Commission invites comment on these proposals.

TABLE 1—SURVEY: SERVICE RATES FOR WALKIE TALKIE/PUSH-TO-TALK SERVICE

Contracting entity/authority	Wireless operator	Service plan	Monthly service rate
State of Florida	Verizon Wireless	Basic Push to Talk (Florida Plan)	$10.00[236]
State of New York	Verizon Wireless	America's Choice for Business Plan—Push to Talk Option	8.10[237]
	Sprint Nextel	Unlimited Nextel Group Walkie-Talkie	7.50[238]

115.The Commission recognizes that interoperability may not be fully achievable without attention to the use of compatible applications. As discussed elsewhere, the Public Safety Broadband Licensee is responsible for approving public safety applications and end user devices. Accordingly, the Commission proposes to clarify that in exercising this responsibility, the Public Safety Broadband Licensee must ensure that any applications and end users devices it approves must be consistent with the interoperability requirements contained in the Commission's rules and in accordance with the NSA. The Commission invites comment as to the merits of this approach and any other methods to achieve interoperability among user applications. In particular, to promote interoperability, including interoperability with legacy voice systems, the Commission proposes to require the Shared Wireless Broadband Network to support a Voice over Internet Protocol (VoIP) capability to complement existing public safety mission critical voice communication systems.

116. If there are multiple regional D Block licensees, it may be necessary to establish a mechanism to enable public safety to coordinate with and establish common approaches among these licensees with regard to interconnection standards, compatibility with common applications, authentication, etc. The Commission invites comment on whether the Commission needs to take any specific actions in this regard or it can be left to the various licensees.

117. *Availability, Robustness and Hardening.* Several commenters offer specific proposals regarding the robustness and hardening requirements for the network.[239] After reviewing the record, the Commission has made a number of changes to the proposals in the Technical Appendix that are reflected in the proposed rules. The Commission proposes to require 99.6 percent network availability for all terrestrial elements of operation, as suggested by U.S. Cellular. The D Block licensee(s) shall use commercially reasonable efforts to provide network availability above this requirement, with the target of 99.9 percent network availability. The methods of measurement are to be defined in the Network Sharing Agreement. Sites designated as ''critical'' will be required to have battery backup power of 8 hours, and shall have generators with a fuel supply sufficient to operate the generators for at least 48 hours. The D Block licensee(s) will make reasonable efforts to provide a fuel supply at ''critical'' sites above this requirement sufficient for a minimum of 5 days. The designation of a site as ''critical'' shall be a joint decision by the D Block licensee(s) and the Public Safety Broadband Licensee, in consultation with the relevant community. The designation of sites as ''critical'' shall not be required to cover more than 35 percent of the shared wireless broadband network sites for the D Block license(s); however, the D Block licensee(s) shall use commercially reasonable efforts to designate as ''critical'' additional sites requested by the Public Safety Broadband Licensee, up to 50 percent of all the licensee's sites. The Commission requests comments on these proposals.

118. The Commission also finds considerable support in the record for permitting reliance on non-terrestrial options to ensure reliability. The PSST, for example, suggests that reliability, availability, and hardening expectations could be ''achieved through a variety of means [including] backup reliance on satellite coverage.''[240] SIA, MSV, Inmarsat, and MSUA all encourage the use of satellite services as part of the nationwide network. Several other commenters also support the use of satellite or similar services to complement the overall network.[241]

[235] Any gateway-based access service necessarily assumes a public safety network in place providing radio coverage on the desired frequencies in the area of operation.

[236] State of Florida, Department of Management Services, Wireless Voice Services, State Term Contract #725–330–05–1, Amendment 4, available at http://dms.myflorida.com/business_operations/state_contracts_agreements_and_price_lists/state_term_contracts/wireless_voice_services/contractors_verizon_wireless (last viewed on Sept. 11, 2008). The pla includes unlimited one to one and group Push to Talk calling.

[237] State of New York, Office of General Services, Verizon Wireless Contract Number PS61217 (effective August 15, 2007), available at http://www.ogs.state.ny.us/purchase/prices/7700802459prices1207.pdf (last viewed on Sept 11, 2008). This rate is available as an add on option for subscribers of the basic voice plan offered by Verizon for $32.99 per month.

[238] *Id.* This price reflects a 25 percent discount off the standard retail rate of $10.00 per month. The Commission notes that Sprint Nextel also offers a ''Basic 200 plan'' for $5 per month.

[239] *See, e.g.*, Televate Comments at 10, PSST Comments Appendix C at 3, Peha Comments at 13.

[240] PSST Comments, Attach. C at 3. *See also* PSST Comments at 34 n.72.

[241] *See* Washington Comments at 1; Mississippi Comments at 1; Comcentric Comments at 4;

Continued

MSV in particular proposes that the Commission ''offer the D Block licensee the option of providing satellite service in return for greater flexibility in meeting certain license requirements.'' [242] These commenters argue that non-terrestrial services can provide critical redundancy to a terrestrial system, increasing the reliability and robustness of the network.[243] MSV states, for example, that ''disasters that impair or destroy terrestrial wireless networks either directly or by disabling the power grid are extremely unlikely to have any adverse impact on satellite networks.'' [244]

119. The Commission agrees with commenters that non-terrestrial capabilities can serve the interests of public safety by increasing the survivability of the system. Although the Commission does not expect that non-terrestrial service can fully substitute for terrestrial network services, the Commission finds that imposing hardening, and robustness requirements on all sites of the network would jeopardize the economic viability of the network. Accordingly, the Commission proposes to permit the D Block licensee(s) and the Public Safety Licensee to agree on other methods to improve network resiliency in lieu of designating critical cell sites. These might include deployment of mobile assets or the use of satellite facilities. Parties are invited to comment on this proposal. The Commission also seeks comment on whether additional satellite capability would further enhance the nationwide shared wireless broadband network and whether it would serve the public interest to provide additional flexibility to a D Block licensee in meeting its licensing obligations if it integrates a satellite component or other non-terrestrial technology with the shared wireless broadband network.

120. *Capacity, Throughput, and Quality of Service.* A number of parties note that an analysis of the economic viability of the shared wireless broadband network cannot be made without addressing certain key technical parameters such as edge of cell data rates and data rates for indoor coverage.[245] The Commission proposed rules address these and other points raised by commenters.

121. The Commission proposes that the shared wireless broadband network typically provide data speeds of at least 1 Mbps in the downlink direction and 600 Kbps in the uplink direction. Irrespective of this requirement, the D Block licensee(s) must provide public safety users with data speeds that are at least as fast as the best data speeds provided to commercial users of the shared wireless broadband network. The Commission also proposes that, at the edge of coverage, the shared wireless broadband network shall provide for data rates of a minimum of 256 kbps directions in urban environments, 128 kbps for suburban and rural areas, and 64 kbps on highways, all under 70 percent loading conditions, in both the downlink and uplink directions as recommended by U.S. Cellular. The Commission recognizes that these data speeds may appear to be relatively slow, but note that they generally ensure that basic service is available even at the edge of coverage under relatively high traffic conditions. For purposes of this rule, the Commission proposes that dense urban will encompass areas where the population per square mile is 15,000 people or greater; urban 2,500–14,999, suburban 200–2499, and rural 0–199, as suggested by the PSST.[246] The Commission also proposes these data speeds serve only as design objectives. It would not be practical or appropriate to apply these data rates as the minimum for any given device at any particular time or location. The Commission appreciates the need to address planning factors for indoor coverage. The Commission is proposing propagation factors in the rules that are to be taken into account in designing the shared wireless broadband network relative to indoor coverage for VoIP service. The Commission finds that it is appropriate to focus only on VoIP because these types of communications occur in real time. Nonetheless, the Commission find that designing the system for indoor VoIP coverage may well serve to ensure the availability of data service in buildings as well. The Commission also proposes to address service to vehicles moving at speeds of up to 100 mph by planning for coverage based on a 1.5 Watt EIRP mobile vehicle mounted radios.[247] The Commission invites comment on these specific proposals

122. The Commission is not proposing any specific requirements relative to overall capacity of the shared wireless broadband network.[248] The overall capacity of a network is very difficult to define because it can depend on many variables such as the level of use at particular locations, how use varies over time, the types of applications that are used, etc. Moreover, it is not feasible to establish rules that would address the various capacity requirements throughout the nation. For example, the capacity required in a dense urban area where public safety has implemented a wide variety of broadband applications would be much greater than in a rural area where only minimal broadband applications might be used. The Commission also notes that none of the commenters specifically addressed overall capacity of the wireless broadband network other than in the context of specifications for data speeds or to suggest that capacity should be negotiated under the Network Sharing Agreement The Commission agree that the capacity of the shared wireless broadband network would be best addressed through negotiation under the Network Sharing Agreement. The Commission does not anticipate that this will create any significant uncertainty for prospective D Block licensee(s) because the Commission

Wirefree Comments at 15. Space Data advocated using their ''near space,'' ''balloon-borne'' network of transceivers that can reach 99.3% of the population less expensively than construction a terrestrial network with similar reach. Space Data Comments at 1–3, 7. The SDR Forum notes that cognitive radios could be used as ''an enabling technology'' to help integrate satellite and terrestrial services. SDR Forum at 20–21, 23.

[242] MSV Comments at i–ii.

[243] *See, e.g.* MSV Comments at 21.

[244] MSV Comments at 9–10.

[245] *See* ALU Comments at 5 recommending: (1) A minimum cell edge data rate of 256 Kbps on the forward link (base to mobile), and 128 Kbps on the reverse link (mobile to base); (2) a link budget supporting 95% (area) coverage reliability corresponding to 90% (edge contour reliability; and (3) a median throughput per transceiver of 1 Mbps downstream and 600 Kbps upstream over 50% of the service area) *See also,* Stagg Newman Comments, attached White Paper ''750 MHz RF Coverage Design for the State of North Carolina'', pp 19–20, proposing 1.0–2.0 Mbps forward link and 450–750 kbps return link (avg.) over 90% of the coverage area and 300 kbps forward link and 50 kbps reverse link at the cell edge covering 85% of the population of North Carolina; *See also* Public Safety Spectrum Trust Comments, attachment C ''Shared Wireless Broadband Network Technical Analysis'' Table 1–A proposing 1000 kbps forward link and 256 kbps reverse link for dense urban and urban morphologies, 512 kbps forward link and 128 kbps reverse link for suburban and rural morphologies, and 128 kbps forward link and 64 kbps reverse link for highways; *See also*, U.S. Cellular ex parte of August 29, 2008, proposing to revise these values to 256 kbps in both directions in urban environments, 128 kbps in both directions for suburban and rural areas, and 64 kbps in both directions on highways, under conditions of 70% loading.

[246] Public Safety Spectrum Trust Comments, Attachment C ''Shared Wireless Broadband Network Technical Analysis'' Table 1–B.

[247] *See* Stagg Newman Comments, attached White Paper ''750 MHz RF Coverage Design for the State of North Carolina'', pp 19–20, proposing an assumed 1.5 Watt EIRP vehicle mounted radio for public safety vehicles.

[248] Elsewhere in this *Third FNPRM*, however, the Commission requires the D Block licensee(s) to ensure public safety users' access to 10 megahertz of spectrum at all times and 12 to 14 megahertz of spectrum in the case of emergencies. *See supra* discussion of Spectrum Use Issues.

expects the capacity requirements will generally follow the patterns of commercial networks. The Commission solicits comment on this analysis. The Commission is also proposing to require that the Network Sharing Agreement include a process for demand forecasting and that the D Block licensee(s) deliver to the Public Safety Broadband Licensee monthly capacity utilization reports as discussed below.

123. The Commission also proposes a number of requirements to ensure quality of service for public safety. The Commission notes that the Department of Homeland Security is working on developing wireless priority service for public safety communications. While the Commission encourages the further development and implementation of wireless priority service for public safety, the Commission will not require implementation before appropriate standards are developed and appropriate hardware and software is available. As discussed elsewhere, the Commission proposes to require the Public Safety Broadband Licensee to establish access priority and service levels, and authenticate and authorize public safety users. The Public Safety Broadband Licensee may accomplish this under the Network Sharing Agreement by establishing its own system that would accomplish these functions or defining parameters that are compatible with commercial technology and can be easily implemented by the D Block licensee(s). This function must be capable of rapid updates to meet public safety's needs. The Commission asks for commenters' views on these proposals.

124. The Commission notes that U.S. Cellular proposed a number of amendments to the PSST's proposed technical requirements whereby the Public Safety Broadband Licensee would establish a system that would be integrated with the shared wireless broadband network to provide a nationwide set of public safety applications, automatically authenticate public safety users, and assign the required priority or quality of service to public safety communications.[249] The implication of this proposal is that it would serve to ensure overall quality of service. It is not clear precisely how this proposal might be implemented. The Commission invites comment on U.S. Cellular's proposal and whether it is viable for both public safety and the prospective D Block licensee(s). The Commission also invites comment on potential costs of this approach and how it might be funded.

125. *Security and Encryption.* The Commission tentatively concludes that the Commission should require the shared broadband network to maintain security and encryption features consistent with commercial best practices and with capabilities described in the Technical Appendix and the *Second Report and Order*.[250] The Commission recognizes that a number of commenters propose more specific requirements. The Wireless Rehabilitation Engineering Research Center for Wireless Technologies, for example, recommends the use of open access networks with built-in default encryption, to reduce potential security risks.[251] Cook Consulting recommends using ''whitelisting'' protocol or encryption to protect the network.[252] Region 33 states that the network should have the same stringent security and encryption requirements as existing and future state and Federal databases.[253] The PSST and NPSTC propose a set of detailed security requirements.[254] Other parties, however, argue that the Commission should maintain a more flexible approach. Leap Wireless states there should be no security requirements beyond what's required for nationwide commercial CMRS networks.[255] Ericsson suggests that security measures beyond those already provided by commercial networks should be negotiated between the D Block licensee and the PSBL and detailed in the NSA.[256] Sprint Nextel states that network security and encryption should be ''consistent with state-of the-art technologies.'' [257] In view of the divergence of opinions regarding the need for more specific security and encryption requirements, and on the appropriate requirements to adopt, the Commission tentatively concludes that the public interest would be better served by maintaining flexibility similar to what the Commission adopted in the *Second Report and Order*. Specifically the Commission proposes to require the D Block licensee(s) to provide security and encryption consistent with commercial best practices. Further, the Commission proposes to require that the D Block licensee(s) shall: (1) Comply with U.S. Federal government standards, guidelines and models that are commercial best practices for wireless broadband networks; (2) implement controls to ensure that public safety priority and secure network access are limited to authorized public safety users and devices, and utilize an open standard protocol for authentication; and (3) allow for public safety network authentication, authorization, automatic logoff, transmission secrecy and integrity, audit control capabilities, and other unique attributes.

126. *Power Limits/Power Flux Density Limits/Related Notification and Coordination Requirements.* In the *Second FNPRM*, the Commission addressed the discrepancy between the text of the *Second Report and Order*, and the applicable rules of the *Second Report and Order*. The text indicated that the Commission would not adopt any power flux density (PFD) limit requirement in the public safety broadband segment, based on the limited record received on this issue.[258] However, the applicable rules require the Public Safety Broadband Licensee to meet a PFD limit when operating base stations at power levels above 1 kW ERP.[259] In light of this discrepancy, the Commission sought comment on whether to retain this PFD requirement for the public safety broadband spectrum.[260] The Commission also noted that Verizon Wireless filed a petition for reconsideration of the *First Report and Order* with regard to certain of the notification and coordination obligations placed on commercial 700 MHz licensees.[261] In light of this petition, the Commission sought comment on whether to apply any or all of Verizon's proposed rule changes to the public safety broadband spectrum.

127. NPSTC supports retaining the PFD requirement, stating that ''the PFD requirement should be retained, as it is there to provide an environmental baseline for which systems can be designed in order to manage the coexistence of various types of systems * * * additionally, [a]ll of the notifications should also be retained without any redefinition (*e.g.* the 1 kW/MHz proposed by Verizon), as these notifications serve as a proactive

[249] U.S. Cellular *ex parte* of August 29, 2008, proposing various amendments to the PSST proposed technical requirements.

[250] *See Second FNPRM*, 23 FCC Rcd at 8131; *Second Report and Order*, 22 FCC Rcd at 15434 para. 405.

[251] Wireless RERC Comments at 15.

[252] Peter G. Cook Consultancy, Inc., Comments at 7.

[253] Region 33 Comments at 10.

[254] PSST Comments Attachment C, at 8; NPSTC Comments at 55.

[255] Leap Wireless Comments at 12.

[256] Ericsson Comments at 22–23.

[257] Comments of Sprint Nextel Corporation at 11.

[258] *See id.*, 22 FCC Rcd at 15417 para. 358.

[259] *See* 47 CFR 90.542(a)(5), (b).

[260] This requirement had initially been imposed on Upper 700 MHz C and D Block licensees to protect public safety narrowband licensees from interference.

[261] Petition for Reconsideration of Verizon Wireless, WT Docket No. 06–150 (filed June 14, 2007) (Verizon Petition).

means to coordinate operations such that interference can be avoided before it happens.'' [262] CEA suggests that the Commission impose the same out of band emission (OOBE) limit for the D Block that applies to the C Block.'' [263]

128. Under existing rules, Upper 700 MHz Band commercial licensees (*i.e.*, C and D Block licensees), if operating base stations at power levels greater than 1 kW ERP, must meet a PFD limit of 3 mW/m^2 on the ground within 1 km of each base station. They must also notify all public safety licensees authorized within 75 km of the base station and all 700 MHz public safety regional planning committees with jurisdiction within 75 km of the station of their intention to operate the base station at a power level greater than 1 kW ERP. Similarly under the Commission's rules, the Public Safety Broadband Licensee must satisfy this PFD requirement when operating a base station at a power level greater than 1 kW ERP.[264] Verizon, in its petition, seeks various changes to the Commission PFD and notification requirements for commercial 700 MHz licensees, asking *inter alia*, that the trigger for such requirements be changed from 1 kW ERP to 1 kW/MHz ERP. NPSTC, which did not file comments in response to the Verizon petition, appears to request that the Commission retain the current 1 kW ERP PFD/notification trigger for C, D, and Public Safety Broadband licensees.

129. The Upper 700 MHz band plan places the public safety narrowband channels (at 769–775 MHz) in between the Public Safety Broadband spectrum (at 763–768 MHz) and the upper C block (at 776–787 MHz). Thus, any decision to modify the PFD trigger for either the Public Safety Broadband spectrum or the upper C block could have a potential impact on public safety narrowband channel operations. Therefore, rather than deciding, in this proceeding, on the appropriate PFD/notification trigger for the Public Safety Broadband spectrum, the Commission shall defer this decision to the upcoming proceeding addressing the Verizon petition, where the Commission will take a comprehensive look at the potential consequences for the public safety narrowband channels of modifying the trigger for the Public Safety Broadband Licensee *and* the C block licensee. NPSTC's comments in the instant proceeding shall be incorporated into the proceeding addressing the Verizon petition. The Commission also invites comments from other parties on this issue, and any such comments will be incorporated into that proceeding as well.

130. With regard to CEA's suggestion that the Commission impose the same out-of-band emission (OOBE) limit for both the C and D Blocks, currently the D Block licensee is required to provide enhanced OOBE protection [265] to only the public safety narrowband channels, while the C block licensee is required to provide such protection to both the public safety narrowband channels *and* the Public Safety Broadband spectrum. The Commission does not require the D Block licensee to provide this extra OOBE protection to the Public Safety Broadband spectrum due to the special relationship that exists between the D Block and Public Safety Broadband Licensee. If the Commission decides to maintain that relationship, the Commission tentatively concludes that the Commission should continue to require the D Block licensee to provide extra OOBE protection only to the public safety narrowband channels. The Commission tentatively concludes as well that if the Commission does not maintain the existing relationship between the D Block and Public Safety Broadband Licensee, the Commission should require the D Block licensee to provide extra OOBE protection to both the Public Safety Broadband spectrum and the public safety narrowband channels—and thus require C and D Block licensees to meet the same OOBE limits in protecting public safety operations, as CEA suggests.

131. *Satellite-capable Handset Requirement.* The Commission proposes to continue requiring that the D Block licensee make available to public safety users at least one handset that includes an integrated satellite solution, by which the Commission means that the handset must be capable of operating on both the 700 MHz public safety broadband network and on the satellite frequency bands and/or systems of satellite service providers with which the Public Safety Broadband Licensee has contracted for satellite service.[266] In addition, as under existing rules, the Commission proposes not to establish a specific deadline, but to leave the terms and timeframe for the availability of the handset to be specified in the NSA. The Commission proposes to clarify, however, that in the event the Commission license the D Block on a regional basis, the Commission do not preclude the regional licensees from relying on the same handset model to meet this requirement. In addition, because it is not clear that current or developing technology can provide for handoffs between a terrestrial network and a satellite service, however, the Commission proposes to clarify that handsets need not provide for seamless operation between the terrestrial and satellite modes to meet the Commission requirement. The Commission also tentatively declines to adopt MSV's proposal that all public safety handsets be required to be satellite-enabled. As before, the Commission finds that the Public Safety Broadband Licensee, in consultation with the D Block licensee(s), will be in the best position to determine the extent to which public safety equipment should have integrated satellite capability. The Commission invites further comment, however, on whether it should require more than one handset with an integrated satellite solution and if so, what number or percentage of devices should have that feature.

3. Performance Requirements, License Term, and Renewal

132. *Background.* In the *Second Report and Order,* the Commission decided that the D Block license would be issued for a period of ten years and imposed unique performance requirements for the D Block license in connection with the construction of the shared wireless broadband network. Specifically, the Commission required the D Block licensee to provide signal coverage and offer service to at least 75 percent of the population of the nationwide D Block license area by the end of the fourth year, 95 percent by the end of the seventh year, and 99.3 percent by the end of the tenth year.[267] The Commission further specified that ''the network and signal levels employed to meet these benchmarks be adequate for public safety use * * * and that the services made available be appropriate for public safety entities in those areas.'' [268]

133. Certain other requirements were imposed to further ensure coverage of highways and certain other areas such

[262] NPSTC Comments at 46–47.

[263] Comments of Consumer Equipment Association at 6.

[264] The Commission do not, however, require the PSBB licensee to notify other 700 MHz licensees of its intention to operate at a power level greater than 1 kW ERP.

[265] The standard OOBE limit, which applies to CMRS operations in various bands, requires licensees to attenuate their emissions by a factor not less than 43 + 10log P dB. The enhanced OOBE protection referred to herein requires Upper 700 MHz commercial licensees to attenuate their base station emissions by a factor not less than 76 + 10 log (P) dB and to attenuate mobile and portable station emissions by a factor not less than 65 + 10 log (P) dB.

[266] *See Second Report and Order,* 22 FCC Rcd at 15452 para. 464.

[267] *Second Report and Order,* 22 FCC Rcd at 15445 para. 437.

[268] *Id.* at 15446 para 440.

as incorporated communities with a population in excess of 3,000.[269] The Commission concluded that these build-out requirements ''will ensure that public safety needs are met.'' [270] The Commission also required, however, that, ''to the extent that the D Block licensee chooses to provide commercial services to population levels in excess of the relevant benchmarks, the D Block licensee will be required to make the same level of service available to public safety entities.'' [271]

134. In addition to establishing performance requirements and a ten-year license term, the Commission also determined that the performance requirements and license period would start on February 17, 2009. The Commission determined that this would be the initial authorization start date because it is the DTV transition date.[272] The Commission also established that at the end of the ten-year term the D Block licensee would be allowed to apply for license renewal and that renewal would be subject to the licensee's success in meeting the material requirements set forth in the NSA as well as all other license conditions, including meeting the performance benchmark requirements.[273] Because the initial NSA term expired at the same time, the Commission decided that the D Block licensee must also file a renewed or modified NSA for Commission approval at the time of its license renewal application.[274] Given these detailed license renewal requirements, the Commission declined to impose a separate substantial service showing in the *Second Report and Order.*

135. In the *Second FNPRM,* the Commission sought comment on whether the Commission should revise the performance requirements that the Commission imposed on the D Block licensee with regard to building out the nationwide, interoperable broadband network and, if so, how those requirements should be revised.[275] Specifically, the Commission sought comment on whether the Commission should retain the existing end-of-term population benchmark of 99.3 percent or whether the Commission should adopt a lower population benchmark that is equal to or more aggressive than the 75 percent benchmark that is applicable to the 22 megahertz C Block that is licensed on REAG basis.[276] The Commission noted that each of the top four nationwide carriers is currently providing coverage to approximately 90 percent or more of the U.S. population.[277] Given that existing commercial wireless infrastructure already covers approximately 90 percent of the population, the Commission sought comment on whether it is reasonable to expect that the D Block licensee would be able to meet at least a 90 percent of the population coverage requirement or more, or whether some other coverage requirement is appropriate.

136. The Commission observed that for the 22 megahertz C Block the Commission required licensees to provide signal coverage and offer service to at least 40 percent of the population in each EA of the REAG license area within four years and to at least 75 percent of the population in each EA of the REAG license area by the end of the ten-year license term.[278] Given that the licenses in the C Block were successfully auctioned in Auction 73, and that at least one bidder has put together a nearly nationwide geographic footprint with these licenses, the Commission assumed that the D Block licensee should, at the very minimum, be able to meet these benchmarks with respect to its nationwide license. The Commission sought comment on that assumption.

137. In addition, the Commission invited comment on whether the Commission should extend the license term for the D Block license, and possibly the Public Safety Broadband License, if the Commission determined to provide for construction benchmarks that extended past the initial license term that the Commission established for the D Block license.[279] The Commission asked whether doing so would make it easier for the D Block licensee to meet the performance requirements that the Commission adopts. Specifically, if the Commission were to adopt a 15-year license term, the Commission sought comment on whether this would increase the commercial viability of the required network while still meeting public safety needs. If the Commission were to adopt such a modification, the Commission asked whether the interim build-out benchmarks should be modified. For example, the Commission stated that the Commission could require the D Block licensee to provide signal coverage and offer service to at least 50 percent of the population of the nationwide license area by the end of the fifth year, 80 percent of the population of the nationwide license area by the end of the tenth year, and 95 percent of the population of the nationwide license area by the end of the fifteenth year. The Commission also noted that the NSA was to have a term not to exceed 10 years from February 17, 2009, to coincide with the term of the D Block license, and the Commission asked whether the Commission should extend the term of the NSA to be co-extensive with any extended term the Commission may adopt for the D Block.[280]

138. The Commission sought further comment on whether the Commission should revise the Commission's rules to permit the D Block licensee to use Mobile Satellite Service to help it meet its build-out benchmarks.[281] The Commission noted that satellite services can enable public safety users to communicate in rural and remote areas that terrestrial services do not reach or in areas where terrestrial communications networks have been damaged or destroyed by wide-scale natural or man-made disasters. In light of these observations, the Commission asked if the Commission should permit the D Block licensee to utilize Mobile Satellite Service as a way to meet, in part, its build-out obligations.[282]

139. Parties who filed comments in response to these issues that the Commission raised in the *Second FNPRM,* include nationwide service providers,[283] regional service providers,[284] small service providers,[285] consumer electronics manufacturers,[286] commercial entities,[287] entities representing rural interests,[288] entities representing public safety

[269] *See id.* at 15445 para. 438–15446 para. 440.

[270] *Id.* at 15445 para. 437.

[271] *Id.* at 15446 para. 440.

[272] *Id.* at 15450 para. 457.

[273] *Id.* at 15450 para. 458.

[274] *Id.*

[275] *Second FNPRM,* 23 FCC Rcd at 8075 para. 74, 8080–86 paras. 88–105.

[276] *Id.* at 8081 para 91.

[277] *Id.* (citing USB Warburg Investment Research, US Wireless 411, at 17 (Mar. 18, 2008).

[278] *Id.* at 8082 para. 94.

[279] *Id.* at 8081 para. 90, 8083 paras. 96, 98.

[280] *Id.* at 8083 para. 98.

[281] *Id.* at 8083–84 para. 99.

[282] *Id.* at 8084 para. 100.

[283] AT&T Comments at 14; Sprint Nextel Comments at 2, 14–15; US Cellular Comments 21.

[284] Leap Comments at 13; NTCH Comments at 9; SouthernLINC Reply Comments at 7.

[285] ACT Comments at 2; Big Bend Comments at 2; CTC Comments at 2; Kennebec Comments at 2; PVTC Comments at 2; Ponderosa Comments at 2; Smithville Comments at 2; Spring Grove Comments at 2; Van Buren Comments at 2; Wiggins Comments at 2.

[286] CEA Comments at 3; Ericsson Comments at 26; Motorola Comments at 13; Qualcomm Comments at 11; Motorola Reply Comments at 4.

[287] ComCentric Comments at 4; Coverage Co. Comments at 6; GEOCommand Comments at 9; Google Comments at 12; Interisle Comments at 6; Rivada Comments at 2; Space Data Reply Comments at 2; Televate Comments at 4; Tyco Comments at 5; Wirefree Comments at 15.

[288] Council Tree Comments at 14.

organizations,[289] and citizens.[290] In addition, several local governments filed comments.[291] Most contend that the current final benchmark requirement—that the network cover at least 99.3 percent of the population nationwide within 10 years—is unrealistic. For instance, AT&T states that the requirement ''to build out the public/private network to cover 99.3 percent of the population nationwide within ten years'' ''may have been overly aggressive.'' [292] Likewise, Interisle believes that the ''99.3% benchmark for year 10 coverage of the population is unrealistically high.'' [293]

140. A range of final benchmarks to levels less than 99.3 percent are proposed in the comments of many commercial commenters. For example, some of these commenters propose a final benchmark of 95 percent population coverage.[294] Northrop Grumman asks ''the Commission to adopt a coverage benchmark of 95%,'' [295] which it considers to be ''a much more reasonable level for an especially cost-intensive build-out of new network service.'' [296] Televate believes that the D Block licensee should ''serve at least 95 [percent] of the population.'' [297] Space Data, however, argues that there is no need to relax the performance requirements that apply to the 700 MHz D Block spectrum.[298]

141. Leap recommends that the ''performance requirements relating to the construction of the network should be set at the same level as was set for the C Block in Auction 73.'' [299] In its reply comments, Council Tree ''endorses'' Leap's proposal that the ''network construction requirements for the D Block license be modified to match those that applied to the Upper 700 MHz Band C Block licenses awarded in Auction 73.'' [300] SouthernLINC encourages the Commission to reject those arguments that call for network construction based on ''commercial-level best practices for reliability'' or C Block-type coverage requirements of only 75% of the population.'' [301] If public safety agencies only need commercial-grade wireless coverage, SouthernLINC states that they should simply subscribe to existing commercial offerings. A number of other parties simply recommend that the Commission proposes more realistic benchmarks without offering a specific percent coverage of the population.

142. A few public safety commenters support 95 percent or lower population coverage, including the National Regional Planning Council (NRPC).[302] NRPC reasons that ''[w]ith commercial wireless operations today already covering approximately 90% of the U.S. population base, this would be a good starting point with a goal of adequate broadband coverage over 95% of the U.S. population within the 10-year license term.'' [303] Region 6, 700 MHz Planning Committee (Region 6), asserts that a more ''realistic'' performance requirement ''would be 95% of the United States population within all Urban Areas as defined by the Federal Department of Homeland Security, while allowing the successful bidder to expand that coverage upon execution of Memorandum of Understandings with any remaining governmental agencies.'' [304] In addition, Region 33 considers 99.3 percent ''unrealistic'' and supports a reduction down to 90 percent, asserting this would be ''more attainable and feasible.'' [305]

143. Other national public safety commenters, however, have not advocated for a reduction in performance requirements, or for a more modest reduction. NATOA does not appear to support any reductions in performance requirements. APCO argues for an extension of the deadlines of five years, but does not discuss reductions in the final benchmark level. PSST and NPSTC argue for a reduction to 98 percent.[306] NENA supports a ''reasonable'' reduction of the 99.3 percent requirement, but does not specify to what level.

144. In its *en banc* testimony, US Cellular states that the standards ''for population coverage and reliability should be achieved over the license term, and the rules should allow reasonable differences in build-out and performance based on the population density of the license areas.'' [307] US Cellular proposes that the rules ''specify a range for population coverage, permitting the PSST, in consultation with public safety entities and potential bidders, to specify the requirements for specific areas as part of the NSA put forward pre-auction.'' [308] US Cellular's example of such a tiered structure reflects four tiers of coverage requirements of 86, 90, 94, and 98 percent, from lowest to highest population densities, for license areas based on NPSPAC regions.[309]

145. Some commenters argue that keeping the existing 99.3 percentage population benchmark is acceptable as long as the Commission extends the time period to meet this objective. Ericsson does not believe that the Commission needs to lower the end-of-license term coverage requirement to less than 99.3% of population, if the Commission lengthens the D Block license term. Ericsson states that extending the D Block license term from ''10 years to 15, 20, or even 25 years would allow the schedule of build-out milestones to be spread across a longer time period.''[310] Likewise, Council Tree contends that, ''[g]iven the uncertainties inherent in the 700 MHz Public/Private Partnership,'' the D Block license term ''should be extended from ten years to twenty years in duration regardless of the determinations the Commission makes with respect to its performance requirements.'' [311] Wirefree also ''supports extending the license term from 10 to 15 years as a fair trade off for building a shared use network for public safety.'' [312]

146. Some public safety organizations also support extending the D Block license term. PSST suggests that if the Commission keeps the existing 99.3 percentage of population benchmark, then the Commission should ''extend

[289] AASHTO Comments at 11; APCO Comments at 14; NATOA Comments at 8; NENA Comments at 2; NPSTC Comments at 12; Region 6 Comments at 2; Region 20 Reply Comments at 14; Region 33 Comments at 18; PSST Comments at 34.

[290] Bazelon Comments at 14; Newman Comments at 4; Pela Comments at 5.

[291] ADA County Sheriff's Office Comments at 2; Philadelphia Comments at 2.

[292] AT&T Comments at 14.

[293] Interisle Comments at 6.

[294] *See* Sprint Nextel Comments (advocating 95 percent with a bidding credit if the bidder commits to greater); Northrop Grumman Comments at 5. *See also* ACT Comments at 2.

[295] Northrop Grumman Comments at 5; Northrop Grumman Reply Comments at 1.

[296] Northrop Grumman Comments at 5.

[297] Televate Comments at 9.

[298] Space Data Reply Comments at 2.

[299] Leap Comments at 13.

[300] Council Tree Reply Comments at 14.

[301] SouthernLINC Reply Comments at 7.

[302] NRPC Comments at 4; RPC 6 Comments at 2; RPC 33 Comments at 18.

[303] NRPC Comments at 4.

[304] RPC 6 Comments at 2.

[305] RPC 33 Comments at 18.

[306] 306 PSST Comments at 5; NENA Comments at 2; NPSTC Comments at 12.

[307] Testimony of LeRoy T. Carlson, Jr., Chairman, US Cellular, FCC *En Banc* Hearing, Brooklyn, New York, Federal Communications Commission, July 30, 2008, *http://www.fcc.gov/realaudio/presentations/2008/073008/carlson.pdf* (Carlson Testimony) at 3.

[308] *Id.* at 3–4.

[309] *Id.* at 8. In its comments and reply comments, US Cellular suggests that the Commission should require the D Block licensee to ''provide signal coverage and offer service to at least 50 percent of the population of the nationwide license area by the end of the fifth year, 80 percent of the population of the nationwide license area by the end of the tenth year, and 95 percent of the population of the nationwide license area by the end of the fifteenth year.'' US Cellular Comments at 21 & n.43, citing *Second FNPRM,* at para. 95; US Cellular Reply Comments at 12.

[310] Ericsson Comments at 26.

[311] Council Tree Comments at 19.

[312] Wirefree Comments at 15.

the D Block license term (and the PSBL license term) by five years with a corresponding extension of the current construction requirements.'' [313] AASHTO believes that ''reaching 99.3% of the population within ten years from the issuance of a license is admirable and perhaps can remain as an ultimate goal, but with an increased time span to achieve the goal.'' [314] APCO contends that it is reasonable ''to extend the timelines of some of these benchmarks by five years (with a corresponding extension of the license term).''[315] NENA supports a reasonable reduction in build-out requirements, ''e.g., reducing the 99.3% geographic build-out requirement to a 15-year license term'' rather than the current 10 year license term.[316]

147. Comcentric, Leap, and Ericsson support the notion that the Commission should allow the D Block licensee to meet, at least in part, its build-out obligation through the use of Mobile Satellite Service. For areas without terrestrial network coverage, Leap indicates that the Commission could ensure that public safety officials have adequate service by permitting the carrier to use other alternatives for satisfying coverage requirements (e.g., satellite).[317] Ericsson states that the Commission should allow the D Block licensee to meet the interim benchmarks though satellite service, but that the licensee should be required to meet the final benchmark only through the use of terrestrial broadband facilities.[318] Comcentric argues that the public broadband network should cover ''a minimum of 98% of the population with terrestrial links and 100% of the geographic area with 'in motion' satellite connectivity for rural public safety officers.''[319]

148. *Discussion.* The Commission tentatively concludes that the Commission should modify the population-based performance requirements and the length of the license term that the Commission adopted in the *Second Report and Order* for the D Block spectrum in order to make this spectrum more commercially viable while at the same time ensuring that public safety needs are met. As discussed below, the Commission proposes to require the D Block licensee(s) to meet performance requirements based on PSRs, regardless of whether the D Block license is regional or nationwide. The Commission proposes that a D Block licensee must meet specified population coverage benchmarks at the end of the fourth, tenth, and fifteenth years of its license term, and that it must meet these benchmarks in each PSR over which it is licensed, regardless of whether the D Block spectrum is licensed on a regional or nationwide basis.

149. Specifically, the Commission tentatively concludes that the licensee(s) of D Block spectrum be required to provide signal coverage and offer service to at least 40 percent of the population in each PSR by the end of the fourth year, and 75 percent by the end of the tenth year. The Commission proposes to adopt a ''tiered'' approach after 15 years for the final benchmark, applying one of three benchmarks depending on the population density of the PSR: (1) For PSRs with a population density less than 100 people per square mile, the licensee(s) will be required to provide signal coverage and offer service to at least 90 percent of the population by the end of the fifteenth year; (2) for PSRs with a population density equal to or greater than 100 people per square mile and less than 500 people per square mile, the licensee(s) will be required to provide signal coverage and offer service to at least 94 percent of the population by the end of the fifteenth year; and (3) for PSRs with a population density equal to or greater than 500 people per square mile, the licensee(s) will be required to provide signal coverage and offer service to at least 98 percent of the population by the end of the fifteenth year.[320] These revised population coverage requirements will have to be met on a PSR basis, and the licensee(s) will have to use the most recently available decennial U.S. Census data at the time of measurement to meet the requirements. The Commission also tentatively concludes to revise the length of the D Block license term from 10 to 15 years so that it coincides with the Commission proposed end-of-term performance requirements. The Commission also tentatively concludes that the Commission will not impose a separate substantial service showing for license renewal apart from requiring that a D Block licensee meet the requirements set forth in the NSA and the Commission's proposed performance requirements, with the possible exception of the Gulf of Mexico PSR, as discussed below. The Commission seeks comment on these tentative conclusions.

150. The Commission's proposal would thus modify both the final and interim D Block performance requirements under the existing rules. Most significantly, the Commission proposes to reduce the final performance benchmark from 99.3 percent to the three tiers discussed above and extend the period for achieving the appropriate benchmark from 10 to 15 years. The Commission tentatively concludes that adoption of the interim and end-of-term performance requirements will increase opportunities for participation by a larger pool of bidders, [321] and local and regional build-out will ensure that deployment is responsive to the needs of local public safety groups.[322] The Commission also tentatively concludes that a final benchmark of 99.3 percent of population would likely not be commercially feasible, but that the benchmarks under the Commission's tiered proposal are achievable. For example, the record indicates that 95 percent coverage is achievable,[323] and that reducing the final benchmark from 99.3 percent for a nationwide license will result in significant savings in capital and operational expenses. Space Data estimates that reducing the 10-year coverage requirement from 99.3 percent to 95 percent population nationwide will result in a capital expense savings of $1.0565 billion and an operating expense savings of $2.280 billion.[324] MSV estimates that reducing the 10-year coverage requirement from 99.3 percent to 95 percent population nationwide would result in a capital expense savings of $4.44 billion and an operating expense savings of $7.056 billion.[325] Thus, based on the record, the Commission tentatively concludes that the Commission's proposed new benchmarks along with extending the final benchmark to fifteen years, will make building out a network more viable economically than under the current benchmarks while also ensuring that public safety needs are met. The

[313] PSST Comments at 34.

[314] AASHTO Comments at 11.

[315] APCO Comments at 30.

[316] NENA Comments at 2.

[317] Leap Comments at 13; Leap Reply Comments at 9.

[318] Ericsson Comments at 28.

[319] Comcentric Comments at 4.

[320] *See* Appendix B (listing the minimum coverage requirements at the end of fifteen years for each of the regions).

[321] *See* Carlson Testimony at 2–3.

[322] *See* AT&T Comments at 25.

[323] *See, e.g.*, ACT Comments at 2; NNRPC Comments at 4; Northrop Grumman Comments at 5; Region 6 Comments at 2; Region 33 Comments at 18; Sprint Nextel Comments at 2; US Cellular Comments at 5.

[324] *See* Space Data Comments at Exhibit A.

[325] *See* MSV Comments at 44. *See also* Testimony of Lawrence R. Krevor, Sprint-Nextel Corp., Public Hearing on Public Safety Interoperable Communications—The 700 MHz Band Proceeding, Federal Communications Commission, July 30, 2008, *http://www.fcc.gov/realaudio/presentations/2008/073008/krevor.pdf*, at 2 (increasing coverage from 95 percent to 99.3 percent would increase costs by more than $6 billion).

Commission notes that while most of the licensees will meet a population benchmark of either 90 or 94 percent in year fifteen, the Commission's proposal for the third tier will require at least 98 percent coverage with a population density equal to or greater than 500 people per square mile. However, according to U.S. Cellular's proposal, this 98 percent requirement would apply to only six percent of the total number of NPSPAC regions, and licensees that would have to meet this requirement may be able to build on existing infrastructure thus making commercial opportunities more attractive.[326] The Commission seeks comment on these conclusions.

151. The Commission tentatively concludes that the three tiers of population benchmarks remain an aggressive requirement, given that existing commercial infrastructure currently covers only approximately 90 percent of the nation's population,[327] and that the highest level of population coverage required of any other commercial 700 MHz licensee is 75 percent.[328] Therefore, the Commission also tentatively concludes that the Commission should extend the time provided to the D Block licensee to meet its end-of-term build-out requirement from ten to fifteen years.[329] Giving the D Block licensee five additional years to meet the final benchmark will provide the licensee with additional time to raise capital and construct its wireless network. It will also give the D Block licensee more flexibility and the ability to lower its construction costs.[330] As a result, the Commission's proposal to give the D Block licensee five additional years to build out its network should help to stimulate commercial interest in the D Block spectrum. The Commission also notes that a fifteen year period to accomplish the final performance requirement also receives support from public safety commenters.[331] For these reasons, the Commission tentatively concludes that the proposed final benchmark which uses a three-tiered requirement at 15 years, as discussed above, provides the most aggressive coverage requirement that will still provide an adequate level of commercial feasibility, and the Commission seeks comment on this tentative conclusion.

152. The Commission's proposal also imposes new interim coverage requirements. Specifically, instead of the current interim requirements of 75 percent at four years and 95 percent at seven years, the Commission proposes to require 40 percent at four years and 75 percent at ten years. These interim requirements are identical to the population coverage levels required of 700 MHz C Block REAG licensees at the 4 year and 10 year periods. The fact that all of the C Block licenses were successfully auctioned supports the conclusion that these interim requirements are commercially viable.[332] Thus, the Commission tentatively concludes that the interim coverage benchmarks for the D Block of 40 percent of the population in four years and 75 percent in ten years are commercially viable and will lead to a successful auction of the D Block spectrum. Setting the first benchmark at four years should also provide an adequate period for the development of new advanced technologies so that these technologies can be incorporated into the network implemented by the D Block licensee. At the same time, the Commission proposed interim benchmarks will still help to ensure that the D Block licensee will begin providing service to a significant portion of the nation's public safety community well in advance of the end of its license term. Thus, these proposed benchmarks for the D Block licensee are designed to balance the need to expedite the deployment of an interoperable, broadband public safety network with an appropriate consideration of commercial viability and the need to allow sufficient time for new and innovative wireless broadband technologies to develop. By proposing the Commission three-tiered benchmark with coverage levels at 90 percent or higher, the Commission addresses the special coverage needs of public safety yet ensure this is commercially achievable by affording the D Block Licensee an additional five years to achieve this requirement. Accordingly, the Commission tentatively concludes that the Commission proposed interim benchmarks are consistent with the Commission goal of establishing a national interoperable public safety network that will provide state-of-the-art service to the Public Safety Broadband Licensee. The Commission seeks comment on the Commission tentative conclusion to establish the interim coverage requirements for the D Block as 40 percent of the population in four years and 75 percent in ten years, for each of the 58 PSRs.

153. The Commission tentatively concludes that the D Block licensee should not be permitted to satisfy its performance benchmarks through the provision of non-terrestrial services such as MSS. The Commission finds that MSS and other non-terrestrial technologies cannot currently provide broadband capabilities comparable to those of a broadband terrestrial network. Further, given the significant reduction in geographic area that will need to be covered under the Commission's proposed population based benchmarks and the additional time the Commission is proposing to provide the D Block licensee to build out, the Commission tentatively concludes that it is reasonable to expect the D Block licensee to meet the Commission's proposed benchmarks by building out a terrestrial wireless network. Under the Commission's proposal, the D Block licensee will have fifteen years to build out a terrestrial wireless network to meet the final performance benchmarks. Therefore, requiring the D Block licensee to build out a terrestrial wireless network rather than relying on Mobile Satellite Service or other such technologies should not undercut the Commission goal of making this spectrum more attractive to commercial development and should help ensure the development of a robust public safety network. The Commission seeks comment on these tentative conclusions.

154. To meet the Commission's proposed performance requirements, the Commission tentatively concludes that the Commission will require the D Block licensee to use the most recently available U.S. Census Data and that the licensee meet the Commission's performance requirements on a PSR basis.[333] The Commission recognizes that commercial providers typically focus exclusively on building out high population areas and that first responders have needs in smaller towns and rural areas. However, by proposing

[326] *See* Carlson Testimony at 2, 8 & n.5.

[327] *See* NPRC Comments at 4; Sprint Nextel Comments at 2; *see also Second FNPRM,* 23 FCC Rcd at 8084 para. 91 (citing USB Warburg Investment Research, US Wireless 411, at 17 (Mar. 18, 2008); MSV Comments at 8 (noting that ''[t]he top four national wireless carriers cover on average only 92.7% of the US population'').

[328] *Second Report and Order,* 22 FCC Rcd at 15351 para. 162 (discussing performance requirements for REAG licenses, *i.e.*, C Block).

[329] Both public safety and commercial entities support expanding the time period that the D Block licensee has to meet the final performance requirement. *See, e.g.*, AASHTO Comments at 11; APCO Comments at 30; Council Tree Comments at 19; Ericsson Comments at 26; NENA Comments at 2; PSST Comments at 34; Wirefree Comments at 15.

[330] Ericcson Comments at 26.

[331] *See, e.g.*, PSST Comments at 34.

[332] *See* Leap Comments at 13; Council Tree Reply Comments at 14.

[333] The Commission notes that, by the ''most recently available U.S. Census data,'' the Commission means only the most recent decennial update to the U.S. Census, currently the 2000 U.S. Census Data, and not any estimates or revisions that have occurred between the official decennial updates.

to require that the performance benchmarks be calculated on a PSR basis even in case of a nationwide license, the Commission will ensure that areas with smaller populations and rural areas receive coverage. Accordingly, to meet the benchmarks, the Commission tentatively concludes that the D Block licensee will be required to provide signal coverage and offer service to at least 40 percent of the population in each PSR license area within four years, 75 percent of the population in each PSR license area within ten years, and an appropriate percent of the population in each PSR license area within 15 years.[334] The Commission also proposes to clarify that, to count toward the satisfaction of the Commission's performance requirements, any build-out must provide service that meets the signal levels and other technical requirements that the Commission proposes in this Third FNPRM. Further, to the extent that the D Block licensee chooses to provide terrestrial commercial services to population levels in excess of the relevant benchmarks, the Commission proposes that the D Block licensee be required to make the same level of coverage and service available to public safety entities. The Commission seeks comment on these proposals.

155. In order to promote an additional degree of coverage in rural areas, the Commission proposes to continue, with some modifications, requiring that the D Block licensee extend coverage to major highways and interstates. The Commission further proposes to clarify, however, that any coverage necessary to provide complete service to major highways, interstates, and incorporated communities with populations greater than 3,000 beyond the network coverage required by the Commission's population benchmarks must be established no later than the end of the D Block license term. In addition, the Commission proposes that to the extent that coverage of major highways, interstates and incorporated communities with populations in excess of 3,000 requires the D Block licensee to extend coverage beyond what is required to meet its population benchmarks, the Commission would permit that coverage to be met through non-terrestrial means, such as MSS or other such technologies. As discussed above, the Commission tentatively concludes that the proposed population coverage benchmarks provide the best balance between maximizing coverage and ensuring commercial viability of the network and therefore, that reliance on non-terrestrial technologies is justified to the extent that the proposed requirements regarding major highways, interstates, and small communities would impose a more onerous build-out obligation. In order to provide the D Block licensee with the flexibility to use a myriad of innovative solutions, including non-terrestrial technologies, the Commission seeks comment on whether any of its existing rules for this band regarding terrestrial base stations or land stations may need to be clarified or modified to be applicable to non-terrestrial technologies that perform the same functions of terrestrial base stations and that comply with service rules applicable to the D Block and the Public Safety Broadband spectrum, including rules regarding interference protection and network specifications.[335]

156. To further facilitate public safety access to the network in low or zero-population areas where the network has not yet been constructed and to satellite services more broadly, the Commission proposes to maintain the current requirement that the D Block licensee make available to the Public Safety Broadband Licensee at least one handset suitable for public safety use that includes an integrated satellite solution under terms, conditions, and timeframes set forth in the NSA. The Commission seeks comment on these tentative conclusions.[336]

157. The Commission tentatively concludes to revise the D Block license term and performance requirements start date from February 17, 2009, to the date that the D Block licensees receive their licenses. The Commission previously anticipated that the D Block licensee would receive its license prior to February 17, 2009. Given that the Commission no longer expects to license the D Block before February 17, 2009, the Commission tentatively concludes that the D Block license term and performance requirements start date should be the license grant date as is consistent with other wireless services.[337] The Commission seeks comment on the Commission's tentative conclusion that the Commission should use the license grant date as the start date for the D Block license term and performance requirements.

158. The Commission proposes to continue to allow the D Block licensee to modify its population-based construction benchmarks where the D Block licensee and the Public Safety Broadband Licensee reach agreement and the Commission gives its prior approval for a modification. This approach would allow a certain limited degree of flexibility to meet commercial and public safety needs where those needs may deviate from the Commission's adopted construction benchmarks. As with other commercial 700 MHz Band licensees, the D Block licensee will be required under the Commission's proposal to demonstrate compliance with the Commission's adopted benchmarks by filing with the Commission within 15 days of passage of the relevant benchmarks a construction notification comprised of maps and other supporting documents certifying that it has met the Commission's performance requirements.[338] The construction notification, including the coverage maps and supporting documents, must be truthful and accurate and not omit material information that is necessary for the Commission to make a determination of compliance with the Commission's performance requirements.[339] However, unlike some other commercial licenses and because of the nature of the partnership established herein, the D Block licensee will not be subject to a ''keep-what-you-use'' rule. Rather, the Commission will strictly enforce these build-out requirements and, if the D Block licensee fails to meet a construction benchmark, the Commission may cancel its license, depending on the circumstances, or take any other appropriate measure within its authority. The Commission seeks comment on these proposals.

159. As stated above, the Commission also tentatively concludes to revise the license term for the D Block license

[334] *See* Appendix B.

[335] *See* Space Data *Ex Parte* September 17, 2008 letter to Marlene H. Dortch at 4–5 (requesting, among other things, that the Commission: (1) Amend the definition of ''base station'' in Section 27.4 of the rules to include ''technologies that perform the same functions as land stations,'' and/or (2) provide that any technical requirements in Sections 27.50–27.70 that apply to base stations or fixed towers similarly apply to non-traditional technologies that perform the same functions as base stations or towers.).

[336] As discussed elsewhere in this *Third FNPRM,* the Commission also proposes to continue requiring the NSA to include a detailed build-out schedule that is consistent with the performance benchmarks and requirements that the Commission proposes above.

[337] *See, e.g.*, 47 CFR 1.946.

[338] *See* 47 CFR 1.946(d) (''The notification must be filed with Commission within 15 days of the expiration of the applicable construction or coverage period.'').

[339] *See, e.g.*, 47 CFR 1.17 (Truthful and accurate statements to the Commission); 47 CFR 1.917 (''Willful false statements made therein, however, are punishable by fine and imprisonment, 18 U.S.C. 1001, and by appropriate administrative sanctions, including revocation of station license pursuant to 312(a)(1) of the Communications Act of 1934, as amended.'').

from 10 to 15 years. By making this change, the Commission will provide for uniformity in the length of the performance requirement period and the length of the D Block license term. Further, allowing a significantly longer license term overall has the separate benefit of affording additional investment confidence and certainty. Public safety commenters and commercial entities support extending the D Block license term and the related period of time to meet the Commission proposed performances requirements.[340] By having the license term and performance requirement period end at the same time, it will be easier to assess whether the D Block license should be renewed. The Commission seeks comment on these tentative conclusions.

160. The Commission also proposes not to require the D Block licensee to make a separate substantial service showing for license renewal consistent with the Commission findings in the *Second Report and Order*.[341] At the end of the 15 year license term, the D Block licensee will be permitted to apply for license renewal and that renewal will be subject to the licensee's success in meeting the material requirements set forth in the NSA as well as all other license conditions, including meeting the Commission's proposed performance requirements. Given these detailed license renewal requirements, the Commission does not propose to impose a separate substantial service showing requirement, with the possible exception of the Gulf of Mexico, as discussed below. The Commission seeks comment on this tentative conclusion to not impose on the D Block licensee a separate substantial service showing apart from meeting the requirements set forth in the NSA and the Commission's proposed performance requirements.

161. With respect to the Gulf of Mexico PSR, the Commission notes that this PSR covers a body of water and, therefore, its proposed population-based benchmarks may not be appropriate for this PSR to meet public safety needs in that region. In addition, local and state public safety entities may have very limited operations in this region. Accordingly, the Commission proposes that it give the D Block licensee for the Gulf of Mexico PSR and the Public Safety Broadband Licensee flexibility to negotiate, as part of the NSA, a coverage and service plan for public safety use for that region as needed, subject to Commission resolution in the event of disputes. The Commission also seeks comment on whether it is sufficient to require the Gulf of Mexico D Block licensee to make a showing of substantial service as a condition of licensee renewal, as other 700 MHz licensees are currently required to do,[342] as well as a showing of the D Block licensee's success in meeting the material requirements set forth in the NSA and all other license conditions. The Commission notes that, as proposed above, any build-out would have to meet the signal levels and other technical requirements that the Commission proposes in this Third FNPRM. With respect to the Gulf of Mexico PSR, the Commission notes that this PSR covers a body of water and, therefore, the proposed population-based benchmarks may not be appropriate for this PSR to meet public safety needs in that region. In addition, local and state public safety entities may have very limited operations in this region. Accordingly, the Commission proposes that it give the D Block licensee for the Gulf of Mexico PSR and the Public Safety Broadband Licensee flexibility to negotiate, as part of the NSA, a coverage and service plan for public safety use for that region as needed, subject to Commission resolution in the event of disputes. The Commission also seeks comment on whether it is sufficient to require the Gulf of Mexico D Block licensee to make a showing of substantial service as a condition of licensee renewal, as other 700 MHz licensees are currently required to do,[343] as well as a showing of the D Block licensee's success in meeting the material requirements set forth in the NSA and all other license conditions. The Commission notes that, as proposed above, any build-out would have to meet the signal levels and other technical requirements that it proposes in this *Third FNPRM*.

162. As a result of the Commission's tentative conclusion to revise the license term for the D Block license from 10 to 15 years, the Commission also tentatively concludes to extend the license term for the Public Safety Broadband Licensee. In adopting the 10-year licensee term for the Public Safety Broadband Licensee, the Commission sought to harmonize the license terms to facilitate the contemplated leasing arrangement and build-out requirements.[344] Extending the license term from 10 years to 15 years for the Public Safety Broadband Licensee will be consistent with this reasoning. Also, the Commission tentatively concludes that the license term of the Public Safety Broadband Licensee should re-commence from the date that the D Block licensee receives its license, consistent with the Commission's determination to change the start date of the license term for the D Block licensee to that date. The Commission seeks comment on these tentative conclusions to extend the license term of the Public Safety Broadband Licensee.[345] The Commission proposes that, if the Commission extends these license terms to 15 years, the Commission should also mandate a 15-year NSA term.

163. The Commission proposes to continue requiring the NSA to include a detailed build-out schedule that is consistent with the performance benchmarks that the Commission has proposed in this section.[346] Thus, the Commission proposes to continue to require the NSA to identify the specific areas of the country that will be built out and the extent to which major highways and interstates, as well as incorporated communities with a population in excess of 3,000, within the D Block licensee's service area will be covered by each of the performance deadlines.

164. Finally, the Commission seeks comment on an alternative approach to the one the Commission has tentatively concluded to adopt for purposes of performance requirements, license term, and renewal in this *Third FNPRM*. Specifically, under such an alternative approach, the Commission could require the D Block licensee to provide signal coverage and offer service to at least 40 percent of the population of the license area by the end of the fourth year, 75 percent of the population by the end of the tenth year, and 95 percent of the population by the end of the fifteenth year. The requirements under this alternative approach will have to be met on a PSR basis, and licensees will have to use the most recently available decennial U.S. Census data at the time of measurement to meet the requirements. As a part of this alternative approach, the Commission also proposes to revise the length of the D Block license term from 10 to 15 years so that it coincides with the Commission proposed end-of-term performance requirements. The

[340] *See, e.g.*, AASHTO Comments at 11; APCO Comments at 30; Council Tree Comments at 19; Ericsson Comments at 26; NENA Comments at 2; PSST Comments at 34; Wirefree Comments at 15.

[341] *See Second Report and Order,* 22 FCC Rcd at 15450 para. 458.

[342] 47 CFR 27.14(e).

[343] 47 CFR 27.14(e).

[344] *See Second FNPRM,* 23 FCC Rcd at 8083 para. 98.

[345] Elsewhere in this *Third FNPRM*, the Commission similarly proposes extending the initial term of the NSA to 15 years.

[346] *See Second Report and Order,* 22 FCC Rcd at 15449 para. 453.

Commission seeks comment on this alternative approach, and specifically on the adoption of a 95 percent coverage requirement by the end of the fifteenth year of the license term instead of the three tiered approach which the Commission proposes elsewhere in this *Third FNPRM.*

4. Role and Responsibilities of the D Block Licensee in the Management, Operations, and Use of the Network

165. *Background.* In adopting the 700 MHz Public/Private Partnership in the *Second Report and Order,* the Commission sought to delineate the respective roles and responsibilities of the D Block licensee and the Public Safety Broadband Licensee in a manner that would ensure the construction and operation of a shared, interoperable broadband network infrastructure that operated on the 20 megahertz of spectrum associated with the D Block license and the Public Safety Broadband License and that served both the needs of commercial and public safety users.[347] Under this plan, the D Block licensee and its related entities would finance, construct, and operate the shared network,[348] but the full extent of the D Block licensee's operational role was not specified. In particular, the Commission indicated that the Public Safety Broadband Licensee, which would be required to lease its spectrum on a secondary basis to the D Block licensee pursuant to a spectrum manager leasing arrangement,[349] would also have operational control of the network ''to the extent necessary to ensure public safety requirements are met.'' [350] In the *Second FNPRM*, the Commission sought comment on whether additional clarity with regard to the role and responsibilities of the D Block licensee would be helpful to ensure that the 700 MHz Public/Private Partnership achieves its goal in creating a shared, interoperable broadband network.[351] In particular, the Commission indicated the Commission's expectation that the D Block licensee would establish a network operations system, including an operations/monitoring center, billing functions, and customer care services, among other elements, to support the network infrastructure that it deployed and the services that it provided over that infrastructure to public safety entities.[352] The Commission sought comment on whether the Commission should provide that all such traditional network service provider operations for the benefit of either commercial users or public safety users should be responsibilities exclusively assumed by the D Block licensee, and whether assigning such responsibilities exclusively to the D Block licensee would better enable the Public Safety Broadband Licensee to administer access to the national public safety broadband network by individual public safety entities and to perform its other related responsibilities.[353]

166. *Comments.* Several commenters—including both commercial and public safety entities—state that the D Block licensee should maintain control of the network, subject to some limited areas of operational authority by the Public Safety Broadband Licensee. For instance, AT&T argues that commercial partners should have ''day-to-day'' operational control over the entire network, ''subject only to discrete PSBL operational authority defined by the Commission prior to the RFP process or a reauction.'' [354] Similarly, Ericsson contends that that the D Block licensee should run a substantial part of the network on a ''day-to-day'' basis.[355]

167. The PSST argues against allowing the D Block licensee ''sole control over all of the traditional network service provider operations, including those associated with the spectrum for which the PSST is the licensee.'' [356] It argues that providing the D Block licensee with ''sole control'' will impair the Public Safety Broadband Licensee's abilities to administer access and carry out its other obligations, and that fulfilling its functions in the 700 MHz Public/Private Partnership, such as monitoring the D Block licensee's compliance with the terms of the NSA, ''requires that the PSST not be passive or entirely dependent on the activities and assurances of the D Block operator.'' [357] The PSST further asserts that the Public Safety Broadband Licensee must continue to have a ''direct relationship'' with public safety users.[358]

168. The PSST argues that allowing ''the D Block licensee to assume sole control of all traditional network service provider operations on PSBL spectrum would be even more problematic should the FCC authorize a wholesale-only model for the D Block licensee.'' [359] Under a wholesale-only approach, it argues, ''it is not at all clear who would deliver the necessary services to public safety agencies, including ensuring that the primary goal of interoperability is satisfied in an environment where different services might be made available by individual retail providers in different markets, or even in the same market.'' [360] Accordingly, it states, if the D Block winning bidder elects a wholesale model, ''the PSST and FCC will need to be confident that the specific needs of public safety users nonetheless will be met. In addition, the PSST asserts that the D Block licensee's responsibilities should include delivering ''to the Public Safety Broadband Licensee capacity utilization reports that provide a comparative measure of public safety network services utilization against the documented, engineered, installed, and in-service Radio Access (RA) and terrestrial network capacity.'' [361]

169. *Discussion.* The Commission tentatively concludes, consistent with the Commission's tentative determinations elsewhere regarding the appropriate operational role and responsibilities of the Public Safety Broadband Licensee, that the D Block licensee(s) should assume exclusive responsibility for all traditional network service provider operations, including network monitoring and management, operational support and billing systems, and customer care, in connection with services provided to public safety users.

170. As the Commission noted in the *Second FNPRM,* ''primary operational control of the network is inherently the responsibility of the D Block licensee (and its related entities), which would in turn generally provide the operations and services that enable the Public Safety Broadband Licensee to ensure public safety requirements are met.'' [362] The Commission agrees with AT&T that the commercial partner will likely have the experience, resources, and personnel to best perform these

[347] *See, e.g.,* 22 FCC Rcd at 15426 para. 383, 15431 para. 396.

[348] *See, e.g., id.* at 15428 para. 386.

[349] *See id.* at 15437–38 ¶¶ 414–17.

[350] *See id.* at 15434 para. 405.

[351] *See Second FNPRM,* 23 FCC Rcd at 8088 para. 113.

[352] *See Second FNPRM,* 23 FCC Rcd at 8088–89 para. 115.

[353] *See Second FNPRM,* 23 FCC Rcd at 8088–89 para. 115

[354] AT&T Comments at 16.

[355] Ericsson Comments at 30. *See also* APCO Comments at 35 (arguing that the D Block licensee should manage the network, and that the Public Safety Broadband Licensee needs to move towards a management structure that monitors D Block licensee contract performance and service relations, without duplicating the D Block licensee's core function or neglecting the agencies and citizens the PSBL is charged to protect).

[356] PSST Comments at 11–12.

[357] PSST Comments at 13.

[358] PSST Comments at 12.

[359] PSST Comments at 12.

[360] PSST Comments at 12.

[361] PSST Reply Comments, Attach. A1 at 6.

[362] *Second FNPRM,* 23 FCC Rcd at 8091–92 para. 124.

functions, and that without assurance of day-to-day operational control, commercial partners might be deterred from seeking D Block licenses.[363] Providing that the D Block licensee(s) will assume exclusive responsibility for traditional operations should also avoid any duplication of efforts or responsibilities between the D Block licensee(s) and the Public Safety Broadband Licensee, improving the efficiency of network operation, and ensuring that the Public Safety Broadband Licensee will be focused on meeting its own exclusive functions and responsibilities.

171. In addition, while the Commission provides that only the D Block licensee(s) may directly manage the network or provide network services, the Commission observes that the Public Safety Broadband Licensee will nonetheless retain control over use of the Public Safety Broadband spectrum, pursuant to its license obligations and the spectrum manager leasing arrangement(s) for D Block secondary use lasting for the full term of the license(s),[364] and will have significant input into the provision of such services through the establishment of priority access, service levels and related requirements within the NSA process, approving public safety applications and end user devices, and ongoing monitoring of system performance made possible through the monthly reporting requirement the Commission proposes to mandate on the D Block licensee(s) showing network usage. As a consequence, reserving all traditional network provider functions to the D Block licensee(s) should not prevent the Public Safety Broadband Licensee from maintaining a direct relationship with public safety users or from carrying out its specific assigned responsibilities.

172. As noted above, the Commission tentatively decides to impose specific obligations on the D Block licensee(s) to provide regular monthly reports on network usage to the Public Safety Broadband Licensee as proposed by the PSST. This network reporting requirement will be in addition to the existing requirement that, following the execution of the NSA, the D Block licensee(s) and Public Safety Broadband Licensee must jointly provide quarterly reports including detailed information on the areas where broadband service is deployed, how the specific requirements of public safety are being met, audited financial statements, and other aspects of public safety use of the network.[365] The Commission anticipates that such reporting will enable the Public Safety Broadband Licensee to carry out its responsibility to monitor system performance and provide adequate oversight of the D Block licensee's operations.

173. *National Committee of D Block Licensees.* The Commission notes U.S. Cellular's proposal that, if the D Block is licensed on a regional basis to multiple entities, there should be a National Committee of Licensees, which would: (1) ''Serve as a single point of contact for FCC, PSST and public safety agencies with licensees on national issues;'' (2) ''develop licensees' recommendations for any FCC rule changes''; (3) ''negotiate changes in national NSA with PSST;'' (4) ''arrange support services for operations requiring inter-carrier coordination;'' and (5) ''work in conjunction with existing standards bodies and clearing houses.'' [366] The PSST also has similarly proposed that if the Commission adopts regional licensing, it should, among other things, ''adopt a legally binding governance structure to facilitate interactions among multiple D Block licensees and PSST, and to ensure interoperability and nationwide roaming.'' [367] The Commission seeks comment on these proposals, and more generally on whether, in the event the Commission licenses the D Block on a regional basis, the Commission should require the regional licensees to form a formal national governance structure, and if so, what role and responsibilities this national entity should have in the establishment of the NSA(s), the construction and operation of the regional networks, or any other matter.

174. *Wholesale Service.* With regard to the provision of wholesale service, the Commission has proposed elsewhere in this *Third FNPRM* to continue to permit the D Block licensee(s) the flexibility to provide either retail or wholesale service commercially. With regard to services to public safety entities, however, the Commission tentatively concludes that such flexibility must be limited to some extent. As the PSST notes, ''[u]nder a wholesale-only approach, it is not at all clear who would deliver the necessary services to public safety agencies * * *.'' [368] To address this concern, the Commission tentatively concludes that if the D Block licensee chooses to adopt a wholesale-only model with respect to the D Block spectrum, it must still ensure, though arrangements such as the creation of a subsidiary or by contracting with a third party, that retail service will be provided to public safety entities that complies with the Commission's regulatory requirements.[369] The Commission proposes to require this arrangement to be included in the NSA, and that, whatever the arrangement, the D Block licensee should be responsible for ensuring that service to public safety meets applicable requirements. The Commission notes that the current rules require the D Block licensee to create separate entities to hold the license and network assets, respectively, and a third entity to construct and operate the network, and further require that these separate entities must be special purpose, bankruptcy remote entities, as defined in the rules, to provide the network with a certain degree of protection from being drawn into a bankruptcy proceeding. The Commission seeks comment on whether certain arrangements might enable a D Block licensee to place important assets outside the protection from bankruptcy that the Commission intended through this structure.

5. Role and Responsibilities of the Public Safety Broadband Licensee in the Use of the Network

175. *Background.* In the *Second Report and Order* the Commission charged the Public Safety Broadband Licensee with representing the interests of the public safety community to ensure that the shared interoperable broadband network meets their needs. Specifically, the Commission assigned the following responsibilities to the Public Safety Broadband Licensee concerning its partnership with the D Block licensee:

- General administration of access to the national public safety broadband network by individual public safety entities, including assessment of usage fees to recoup its expenses and related frequency coordination duties.

[363] AT&T Comments at 17.

[364] *See Second Report and Order,* 22 FCC Rcd at 15437–38, paras. 414–17. *See also* 47 CFR 90.1407.

[365] *See Second Report and Order,* 22 FCC Rcd at 15471 para. 530.

[366] Letter from Warren G. Lavey, on behalf of United States Cellular Corp., to Marlene H. Dortsch, Secretary, FCC, WT Docket No. 06–150, filed Sept. 2, 2008 (US Cellular Sept. 2, 2008 *Ex Parte*), Attach., ''Making the Partnership Work: Solutions for the 700 MHz D Block'', at 7.

[367] Letter from Chief Harlin R. McEwen, Chairman, Public Safety Spectrum Trust Corporation, to Marlene H. Dortsch, Secretary, FCC, WT Docket No. 06–150, filed Aug. 29, 2008 (PSST Aug. 29, 2008 *Ex Parte*), at 1.

[368] PSST Comments at 12.

[369] The relationship between a D Block auction winner and the retail-level operating company will be subject to all of the Commission's rules, including, but not limited to, provisions regarding leasing in Subparts Q and X of Part 1 of the Commission's rules.

• Regular interaction with and promotion of the needs of the public safety entities that would utilize the national public safety broadband network, within the technical and operational confines of the NSA.

• Use of its national level of representation of the public safety community to interface with equipment vendors on its own or in partnership with the D Block licensee, as appropriate, to achieve and pass on the benefits of economies of scale concerning network and subscriber equipment and applications.

• Sole authority, which cannot be waived in the NSA, to approve, in consultation with the D Block licensee, equipment and applications for use by public safety entities on the public safety broadband network.

• Responsibility to facilitate negotiations between the winning bidder of the D Block license and local and state entities to build out local and state-owned lands.[370]

176. The Commission also identified several other of the Public Safety Broadband Licensee's responsibilities, which included:

• Coordination of stations operating on public safety broadband spectrum with public safety narrowband stations, including management of the internal public safety guard band.

• Oversight and implementation of the relocation of narrowband public safety operations in channels 63 and 68, and the upper 1 megahertz of channels 64 and 69.

• Exercise of sole discretion, pursuant to Section 2.103 of the Commission's rules, whether to permit Federal public safety agency use of the public safety broadband spectrum, with any such use subject to the terms and conditions of the NSA.

• Responsibility for reviewing requests for wideband waivers and including necessary conditions or limitations consistent with the deployment and construction of the national public safety broadband network.[371]

177. In developing these responsibilities, the Commission afforded the Public Safety Broadband Licensee flexibility in overseeing the construction and use of the nationwide broadband public safety network, while seeking ''to balance that discretion with the concurrent and separate responsibilities'' of the D Block licensee.[372] To that end, the Commission indicated elsewhere that the interoperable shared broadband network must incorporate, among other requirements, ''[o]perational control of the network by the Public Safety Broadband Licensee to the extent necessary to ensure public safety requirements are met.'' [373]

178. In the *Second FNPRM*, the Commission sought comment on whether the Commission should clarify that the Public Safety Broadband Licensee may not assume any additional responsibilities other than those specified by the Commission in this proceeding.[374] The Commission asked generally whether the Commission should clarify, revise, or eliminate any of the specific responsibilities listed above that the Public Safety Broadband Licensee must assume.[375] The Commission also sought comment in particular on whether to clarify or revise the division of responsibility between the Public Safety Broadband Licensee and the D Block licensee regarding direct interaction with individual public safety entities in the establishment of service to such entities, the provision of service, customer care, service billing, or other matters.[376]

179. In addressing these questions, the Commission asked commenters to consider the unique role served by the Public Safety Broadband Licensee by virtue of holding the single nationwide public safety license, while not being an actual user of the network.[377] The Commission observed that the Public Safety Broadband Licensee would in many respects function much as regional planning committees presently do in the 700 MHz and 800 MHz bands, yet with a nationwide scope.[378] The Commission noted, for example, that like regional planning committees, the Public Safety Broadband Licensee would administer access to the spectrum, coordinate spectrum use, interact with and promote the needs of individual public safety agencies, and ensure conformance with applicable technical and operational rules.[379] The Commission further observed that the Public Safety Broadband Licensee has distinct abilities, in that it may assess usage fees to recoup its costs, can use its national level of representation to pass on the benefits of economies of scale for subscriber equipment and applications, and holds sole authority to approve, in consultation with the D Block licensee, equipment and applications for public safety users, and to permit Federal public safety agency use.[380]

180. In light of these similarities and differences, the Commission asked whether there are certain elements of the existing regional planning committee functions that the Commission should adopt for the Public Safety Broadband Licensee, and whether for those functions distinct from regional planning committees, the Commission should adopt specific rules governing how the Public Safety Broadband Licensee would carry those out.[381] To the extent the Public Safety Broadband Licensee also serves a role as a partner with the D Block licensee (such as facilitating negotiations between the D Block licensee and state and local agencies for local build-outs), the Commission asked how, if at all, the Public Safety Broadband Licensee's role as one half of the 700 MHz Public/Private Partnership should impact how the Commission modify or clarify the respective responsibilities of the D Block licensee and the Public Safety Broadband Licensee moving forward.[382]

181. The Commission also observed in the *Second FNPRM* that more specific limits may be required regarding the Public Safety Broadband Licensee's discretion to carry out its partner-related responsibilities.[383] The Commission noted, for example, that the shared wireless broadband network elements adopted in the *Second Report and Order* required that the network infrastructure incorporate operational control of the network by the Public Safety Broadband Licensee ''to the extent necessary'' to ensure public safety requirements are met.[384] The Commission reiterated that the underlying premise of the 700 MHz Public/Private Partnership was that the D Block licensee would be responsible for construction and operation of the broadband network.[385] The Commission observed that allowing duplication of some or all of these operational functions by the Public Safety Broadband Licensee could render it a reseller of services, thus injecting an inappropriate ''business'' or ''profit'' motive into the Public Safety Broadband Licensee structure, and detracting it from the intended primary focus of the Public Safety Broadband Licensee.[386] Accordingly, the Commission sought comment on whether to clarify that

[370] *Second Report and Order* at 15427 para. 383.

[371] *Id.*

[372] *Id.* at 15426 para. 383.

[373] *Id.* at 15434 para. 405.

[374] *Second FNPRM,* 23 FCC Rcd at 8090, para. 121.

[375] *Id.*

[376] *Second FNPRM* at para. 122.

[377] *Second FNPRM* at para. 122.

[378] *Second FNPRM* at para. 122.

[379] *Second FNPRM* at para. 122.

[380] *Second FNPRM* at para. 123.

[381] *Second FNPRM* at para. 123

[382] *Second FNPRM* at para. 124.

[383] *Second FNPRM* at para. 124.

[384] *Second FNPRM* at para. 124.

[385] *Second FNPRM* at para. 124.

[386] *Second FNPRM* at para. 124.

none of the responsibilities and obligations of the Public Safety Broadband Licensee, either as previously adopted or as possibly revised, would permit the Public Safety Broadband Licensee to assume or duplicate any of the network monitoring, operations, customer care, or related functions that are inherent in the D Block licensee's responsibilities to construct and operate the shared network infrastructure.[387]

182. The Commission further sought comment on whether to expressly provide that neither the Public Safety Broadband Licensee nor any of its advisors, agents, or service providers may assume responsibilities akin to a mobile virtual network operator (''MVNO'') [388] because such a role would be contrary to the respective roles and responsibilities of the D Block licensee and Public Safety Broadband Licensee regarding construction, management, operations, and use of the shared wireless broadband network, might unnecessarily add to the costs of the 700 MHz Public/Private Partnership, and might otherwise permit ''for profit'' incentives to influence the operations of the Public Safety Broadband Licensee.[389]

183. *Comments.* The PSST generally argued that it must be an ''equal partner'' in the 700 MHz Public/Private Partnership, and that ''[b]ecause the FCC has made the PSST responsible for the public safety user experience on the SWBN [shared wireless broadband network], it also must provide the PSST with a mechanism that permits the PSST to fulfill that responsibility on an ongoing basis after negotiating the NSA.'' [390] The PSST explained that while it ''accepts the FCC's view that the PSST should not have [ ] an active role in the 'business' of managing the public safety user experience on the SWBN,'' it ''does not agree that the D Block licensee should have sole control over all of the traditional network service provider operations, including those associated with the spectrum for which the PSST is the licensee.''[391] The PSST further argued that ''[c]eding sole control over these important functions to the D Block licensee would seriously impair, not 'better enable,' the PSBL's ability to 'administer access to the national public safety broadband network by individual public safety entities, coordinate frequency usage, assess usage fees, and exercise its sole authority to approve equipment and applications for use by public safety entities.' '' [392] The PSST asserted that ''[i]t is clear to the PSST that for the PSST to 'administer' network access it will need some form of direct relationship with public safety users on the network.''[393]

184. The PSST argued that ''it can fulfill its responsibilities if it is considered to operate in a manner comparable to a 'cooperative' licensee.'' [394] According to the PSST, under this model, the ''cooperative status permits a single entity to hold the authorization for spectrum that will be utilized by multiple users on a non-profit, cost-shared basis when each user is independently eligible to operate on the spectrum.'' [395] Additionally, according to the PSST, ''[t]he cooperative approach should provide the PSST with a direct enforcement right to obtain redress on behalf of public safety users as well as a direct right to ensure that the highest levels of SWBN priority access are only used for public safety authorized purposes.'' [396]

185. The PSST asserted that ''the FCC already has determined that the PSST must have operational control of the SWBN to the extent required to ensure that public safety requirements are met, a responsibility that is critical during incident management.'' [397] The PSST acknowledged that ''this can be accomplished without the PSST establishing Network Operating Centers (NOCs) or other network elements that could be considered parallel to or duplicative of those maintained by the D Block licensee,'' [398] but added that ''the PSST's right to an appropriate level of control dictates that it must have the exclusive right to manage the assignment of the highest priority levels on the SWBN.'' [399]

186. The PSST also argued that it ''must have an independent ability to monitor the D Block licensee's compliance with the FCC rules and with the terms of the NSA as they relate to public safety operations on the SWBN,'' which it further argued would involve monitoring ''the D Block operator's performance on a real-time basis so that problems are identified and corrected, preferably before they impact public safety communications rather than after the fact.'' [400] The PSST clarified that ''[a]lthough the D Block licensee will always have operational control of the SWBN, the PSST should have sufficient access to and certain rights regarding the D Block licensee's NOC and data centers to carry out the PSST's obligations, including implementing priority access for public safety users, if the PSST is not to have its own facilities.'' [401] According to the PSST, ''[n]either the PSST nor the emergency responders who elect to join the network should have to rely entirely on self-policing and self-reporting by the D Block licensee to confirm that public safety needs are being met.'' [402] The PSST further asserted that ''[i]t also is important that the PSST, as well as the D Block licensee, play a direct role in promoting widespread public safety usage of the SWBN.'' [403]

187. The PSST included proposed regulations with its Reply Comments that would implement many of its positions described above.[404] For example, under its proposed regulations defining the ''Shared Wireless Broadband Network,'' the network would ''[p]rovide for operational control of the network by the Public Safety Broadband Licensee, on terms and conditions agreed to by the Public Safety Broadband Licensee and the Upper 700 MHz D Block licensee, to the extent necessary to ensure that Priority Public Safety Users' expectations are met.'' [405] Under the proposed regulations, these terms and conditions

[387] *Second FNPRM* at para. 124.

[388] A mobile virtual network operator is a non-facility-based mobile service provider that resells service to the public for profit. *See* Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, WT Docket No. 05–71, *Tenth Report,* 20 FCC Rcd 15908, 15920 para. 27 (2005).

[389] *Second FNPRM,* 23 FCC Rcd at 8092, at para. 125.

[390] PSST Comments at 10.

[391] PSST Comments at 11–12 (*citing* 47 CFR 1.9010, 1.9020 and 90.1440).

[392] PSST Comments at 12 (*citing Second FNPRM* at para. 115; Appendix, Section II).

[393] PSST Comments at 12.

[394] PSST Comments at 14 (*citing* 47 CFR 90.179).

[395] PSST Comments at 14.

[396] PSST Comments at 14.

[397] PSST Comments at 15.

[398] PSST Comments at 15.

[399] PSST Comments at 16. The PSST further explained that while ''overall control of these priority levels must reside with the PSST, [ ] individual priority assignments may be carried out, as they are today, at more local levels.'' *Id.* The PSST also asserted that it would need to play an ''active role'' in ''[e]stablishing standards for the construction of a SWBN with specific features and services for the benefit of public safety,'' and ''[n]egotiating arrangements for the purchase of equipment from vendors (under master agreements for the benefit of public safety users), and renegotiating these agreements on an ongoing basis to reflect the latest market developments.'' *Id.* at 9–10.

[400] PSST Comments at 16. The PSST also contended that it ''will need to be involved in and able to enforce the contracts between public safety users and the D Block licensee in order to ensure contract compliance and obtain redress on behalf of public safety users, without being reduced to an ineffectual committee preparing reports on NSA compliance.'' *Id.* at 10.

[401] PSST Comments at 16 n.30.

[402] PSST Comments at 16.

[403] PSST Comments at 17.

[404] *See* PSST Reply Comments, Attachment A.

[405] *See* PSST Reply Comments, Attachment A, at 9.

would include the ability of the Public Safety Broadband Licensee and public safety users to ''[h]ave real-time monitoring and visibility into the network that is integrated with performance, SLA, and KPI reports as defined and specified in the NSA'' as well as ''real-time visibility into Shared Wireless Broadband Network service quality and network status relevant to the local agency or jurisdiction, including the ability for local Priority Public Safety Users to have real-time network status, site status, and alarm visibility for their geographic area.'' [406]

188. APCO argued that it would be inappropriate for the PSBL to act as a MVNO because such action ''would add duplication and costs that could become a burden for both the PSBL and, more importantly, end users.'' [407] APCO observed that the MVNO model ''also imposes responsibilities on the PSBL for which it is likely to be ill-equipped,'' and that ''[t]o accept such a responsibility, the PSBL would need to rely heavily upon commercial contractors, and somehow provide sufficient oversight to ensure that the contractors are serving public safety's interests.'' [408] APCO further observed that ''[b]uilding the required internal management and operational capability would also involve very substantial capital expenditures,'' for which the PSBL ''would need to rely upon either debt extended by its contractors [] or substantial payment from the D Block licensee pursuant to the NSA (which would likely discourage bidders once again).'' [409]

189. APCO argued, however, that the ''PSBL does need to have an active role in the operation of the broadband network to ensure that it meets public safety's requirements.'' [410] APCO stated that ''there needs to be a mechanism to oversee priority access and proper incident command and control for the capacity represented by the 10 MHz licensed to the PSBL.'' [411] More specifically, APCO argued that ''the PSBL needs to move towards a management structure that monitors D Block licensee contract performance and service relations, without duplicating the D Block licensee's core function or neglecting the agencies and citizens the PSBL is charged to protect.'' [412] To achieve this objective, APCO proposed a specific list of tasks and services that it contended the PSBL needs the ability to perform.[413]

190. AT&T urged the Commission to ''definitively declare that commercial partners will have operational control over the entire joint network, subject only to specific PSBL operational authority that the Commission clearly defines prior to the RFP process or a reauction.'' [414] AT&T contended that ''[c]ommercial partners require day-to-day operational control over the entire network to ensure that commercial and public safety service offerings meet the high standards expected by commercial and public safety end users on a daily basis,'' adding that ''commercial partners are likely also in the best position to perform this function, given their experience, expertise, and personnel and financial resources.'' [415] AT&T further contended that ''[w]ithout assurance of commercial control over the network's operations, AT&T questions whether any interested commercial parties will participate in a RFP process or reauction.'' [416] To that end, AT&T requested clarification regarding the Commission's statement in the *Second Report and Order* that the Public Safety Broadband Licensee would have ''operational control of the network to the extent necessary to ensure public safety requirements are met.'' [417] More specifically, AT&T argued that ''[i]n order to assess the commercial viability of the Public/Private Partnership, potential commercial participants need the Commission to eliminate [any] ambiguity [on this issue] and to provide a concise definition of ''operational control.'' [418]

191. AT&T further requested that the Commission clarify that ''the PSBL has a responsibility to set priority levels and provision priority users on the public safety network,'' for which AT&T recommends following the model established by [the Department of Homeland Security's National Communications System] in the provisioning of [Wireless Priority Service].'' [419] In addition, AT&T asserted that ''decisions whether a certain public safety device or application should be permitted on the public/private network should rest primarily with the PSBL.'' [420] AT&T indicated that it ''generally agrees'' with the list of potential PSBL responsibilities proposed by APCO.[421] AT&T opposed the notion of allowing the Public Safety Broadband Licensee to act as an MVNO, arguing that allowing ''the PSBL or its advisors operate as an MVNO or otherwise profiteer from the Public/Private Partnership will likely raise the costs of services for public safety users as well as discourage commercial participation in the Public/Private Partnership.'' [422]

192. Big Bend Telephone Company argued that the Commission ''should not permit the Public Safety Broadband Licensee, or any of its advisors, agents, or service providers to provide commercial services as a 'mobile virtual network operator.' ''[423] Big Bend further argued that permitting such action ''would permit 'for profit' incentives to influence the operations of the Public Safety Broadband Licensee,'' which Big Bend argued would ''prove detrimental to the viability of smaller and rural wireless carriers.'' [424] Big Bend also contended that smaller and rural wireless carriers ''should have a reasonable expectation that the FCC's rules will not permit a heavily subsidized competitor—one that did not have to pay for its spectrum or network construction, and that enjoys preferred regulatory status—to compete in the market for commercial wireless services.'' [425] A number of other rural telecommunications carriers filed essentially identical comments.[426]

193. Ericsson asserted that ''[a] substantial portion of that network (at a minimum, the radio access network, and in all likelihood, other network components as well) will be run, day-to-day, by the D Block licensee.'' Ericsson envisioned that the ''PSBL will need to interact regularly with the D Block licensee to ensure that the needs of the public safety organizations using the national public safety broadband network are satisfied, within the

[406] *Id.* The proposed regulations further indicate that ''[o]perational control, as agreed to between the Upper 700 MHz D Block licensee and the Public Safety Broadband Licensee in the NSA, shall include * * * [t]he authorities and permissions for Public Safety Broadband Licensee-trained incident management personnel to have real-time access to the Upper 700 MHz D Block licensee's primary and secondary Network Operations Centers (NOCs).'' *Id.* at 10.

[407] APCO Comments at 34.

[408] APCO Comments at 34.

[409] APCO Comments at 34–35.

[410] APCO Comments at 35.

[411] APCO Comments at 35.

[412] APCO Comments at 35.

[413] APCO Comments at 35–37.

[414] AT&T Comments at 16. *See also* Reply Comments of AT&T at 17–18.

[415] AT&T Comments at 16–17.

[416] AT&T Comments at 17.

[417] AT&T Comments at 17 (*citing Second Report and Order* at para. 405).

[418] AT&T Comments at 17.

[419] AT&T Comments at 17–18.

[420] AT&T Comments at 18.

[421] AT&T Reply Comments at 18.

[422] AT&T Comments at 21–22. *See also* AT&T Reply Comments at 16.

[423] Big Bend Comments at 3.

[424] Big Bend Comments at 3.

[425] Big Bend Comments at 3.

[426] *See* ACT Comments at 2–3; Smithville Comments at 2–3; PVTC Comments at 3; Van Buren Comments at 2–3; Wiggins Comments at 4; CTC Comments at 3; Ponderosa Comments at 2–3.

technical and operational confines of the NSA and FCC rules.'' [427] To that end, Ericsson argued that ''the D Block licensee would need to provide the PSBL with any reports needed to evaluate the effectiveness and proper operation of the priority access and preemption mechanisms.'' [428] Additionally, Ericsson argued that ''the PSBL should be responsible for taking a leadership role in negotiations concerning the siting of facilities on lands owned or controlled by state and local governments, and regarding siting of facilities in cases where state and local government oppose the site.'' [429]

194. Nextwave asserted that ''the PSST should be tasked with organizing, prioritizing, and addressing accordingly the varying broadband needs of the diverse public safety community it serves.'' [430] In particular, Nextwave recommended that ''the FCC leave to the local and regional jurisdictions decisions with respect to standards-based technologies to suit their specific needs, but direct the PSST to provide guidance on coordination of spectrum usage, minimum network performance requirements, permissible standards-based technologies with which the networks must be built to comply, and end-to-end interoperability.'' [431] Furthermore, Nextwave suggested that ''the FCC require the PSST, as licensee of the public safety broadband spectrum, to create and provide an Interoperability Plan to public safety entities for their reference in building regional networks.'' [432]

195. Council Tree contended that ''the Public Safety Broadband Licensee should be required to operate as an accountable MVNO with respect to public safety users.'' [433] Council Tree argued that such action is necessary because ''the MVNO will serve as the appropriate vehicle through which public safety users may commit to certain minimum volume purchase requirements,'' [434] and ''the MVNO structure provides a substantial service to the D Block licensee by taking on the administrative responsibility associated with meeting the unique service needs of public safety users.'' [435] Additionally, Council Tree argued that ''[s]hifting responsibilities to an MVNO directed by the Public Safety Broadband Licensee also simplifies key elements in the NSA and should facilitate negotiation of the agreement.'' [436]

196. *Discussion*. As an initial matter, the Commission does not propose any changes to the responsibilities of the Public Safety Broadband Licensee summarized above that were established by the *Second Report and Order*. Thus, the Public Safety Broadband Licensee will continue to be responsible for such activities as administration of access to the nationwide public safety broadband network by public safety entities, representation of the public safety community in negotiating the NSA with the D Block licensee(s), interaction with equipment vendors and approval of equipment and applications, and administration of the narrowband relocation process.

197. *However*, the Commission tentatively concludes that further clarification as to the responsibilities and obligations of the Public Safety Broadband Licensee would help define the overall 700 MHz Public/Private Partnership model and provide greater certainty to both the Public Safety Broadband Licensee and potential bidders for the D Block license(s) regarding their respective roles. The Commission begins with the premise that the responsibilities and obligations of the Public Safety Broadband Licensee do not include the Public Safety Broadband Licensee assuming or duplicating any of the day-to-day network monitoring, operations, customer care, or related functions that are inherent in the D Block licensee's responsibilities to construct and operate the shared network infrastructure. In the context of the 700 MHz Public/Private Partnership model, the Commission does not envision that the Public Safety Broadband Licensee would operate as an MVNO or that it would exercise actual day-to-day operational control over the shared broadband network. While the Public Safety Broadband Licensee is charged with administering access to the shared broadband network by public safety users, the Commission's view it as carrying out these functions through the establishment of priority access, service levels, and related requirements within the NSA process, as opposed to providing any form of ongoing day-to-day billing or customer care functions to public safety entities desiring to access the shared broadband network.

198. The Commission agrees with commenters who observed that allowing the Public Safety Broadband Licensee to duplicate some or all of the operational functions for which the D Block licensee, as the service provider, inherently is responsible, would effectively render the Public Safety Broadband Licensee a reseller of services, which could inject an inappropriate and impermissible ''business'' or ''profit'' motive into the Public Safety Broadband Licensee's structure.[437] Such duplication of functions also would unnecessarily increase the Public Safety Broadband Licensee's costs.

199. At the same time, the Commission agrees with commenters who observed that the Public Safety Broadband Licensee should have the ability to monitor the services provided by the D Block licensee(s) to ensure that priority access and other operational requirements (including the establishment of service levels and the authentication and authorization of public safety users) are being provided in accordance with the NSA's terms, and should be empowered to work with the D Block licensee to promptly correct any deficiencies. The Commission expects that the Public Safety Broadband Licensee will be able to perform this function through review of monthly usage reports supplied by the D Block licensee(s), and that such monitoring will enable the Public Safety Broadband Licensee to work with the D Block licensee(s) to develop improved ways to meet the evolving usage needs of the public safety community. The Commission also believes that the Public Safety Broadband Licensee can effectively carry out its monitoring role without requiring the D Block licensee to support real-time monitoring by the PSBL or to provide the PSBL with access rights to the D Block licensee's NOC and/or data centers.

200. The Commission believes that the role of the Public Safety Broadband Licensee, as discussed in the *Second Report and Order* and as further clarified above, is fully consistent with the requirement under Section 310(d) of the Communications Act that it exercise *de facto* control over use of the public safety broadband spectrum. Although the Public Safety Broadband Licensee will not exercise day-to-day operational control of the shared broadband network, the Commission has previously stated that operational control of facilities is not a statutory requirement to establish control, so long as the licensee retains ultimate control over use of the licensed spectrum.[438] In

[427] Ericsson Comments at 30.
[428] Ericsson Comments at 30.
[429] Ericsson Comments at 30.
[430] Nextwave Reply Comments at 8.
[431] Nextwave Reply Comments at 8–9.
[432] Nextwave Reply Comments at 9.
[433] Council Tree Comments at 21.
[434] Council Tree Comments at 21.
[435] Council Tree Comments at 22.
[436] Council Tree Comments at 22.
[437] *See, e.g.*, Big Bend Telephone Company Comments at 3.
[438] *See generally* Promoting Efficient Use of Spectrum Through the Elimination of Barriers to the Development of Secondary Markets, WT Docket

this case, the Public Safety Broadband Licensee will exercise control over use of the public spectrum by defining and administering the terms of access and use of the spectrum, maintaining an active monitoring and oversight role based on the monthly reports provided by the D Block licensee, and exercising its other responsibilities enumerated above and in the *Second Report and Order*. The Public Safety Broadband Licensee will also have the authority to act on information provided in the D Block licensee's reports, if necessary, by bringing a complaint or petition for declaratory ruling to the Commission.[439] This authority will enable the Public Safety Broadband Licensee to carry out its core responsibility to ensure compliance with Commission rules and policies by users of the public safety broadband spectrum.

201. Accordingly, the Commission tentatively concludes that the Commission should clarify the Public Safety Broadband Licensee's responsibilities with respect to ''general administrator of access,'' as well as the requirement (codified in existing rule sections 27.1305(h) and 90.1405(h)) that the network incorporate ''operational control'' as follows. The Commission proposes that the D Block licensee(s) build into the shared broadband network infrastructure a capability to provide monthly usage reports covering network capacity and priority access so that the Public Safety Broadband Licensee can monitor usage and provide appropriate feedback to the D Block licensee(s) on operational elements of the network. The Commission further proposes that the Public Safety Broadband Licensee utilize these reports to carry out its role in administering access to the shared broadband network in consultation with local, regional and state public safety agencies. The Public Safety Broadband Licensee also may administer access in terms of establishing access priorities and service levels, authenticating and authorizing public safety users, approving equipment and applications for public safety end users of the network, and interacting with the public safety community to facilitate an understanding of the opportunities made possible by subscribing to the interoperable shared broadband network and the procedures for doing so.

00–230, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604 (2003) (concluding that operational control of facilities was not a prerequisite for establishing that a licensee retained *de facto* control under Section 310(d) in the spectrum leasing context).

[439] *See Second Report and Order*, 22 FCC Rcd at 15470, para. 528.

6. Post-Auction Process for Establishing a Network Sharing Agreement

202. *Background*. In the *Second FNPRM*, the Commission sought comment on whether and how to modify the post-auction process, including provisions governing negotiations between a winning D Block bidder and the Public Safety Broadband Licensee for a Network Sharing Agreement. The Commission sought comment on whether modifications to the process would create greater incentives for the D Block winner and the PSBL to negotiate the terms of the NSA in good faith, while reasonably protecting their respective interests. In particular, comment was sought regarding what consequences following failure to negotiate an NSA would provide the best set of incentives for effective negotiation. For example, such consequences could include offering a D Block license to the next highest bidder, as well as possibly requiring the initial D Block winner to cover the PSBL's costs associated with the unsuccessful negotiations; or conducting a new auction, with or without the winner of the initial auction; or conducting a new auction with licenses no longer subject to the Public Private Partnership, with or without the winner of the initial auction and/or with parties previously excluded from the initial auction; and/or subjecting the D Block winning bidder to default payments, either dependent on or irrespective of its good faith in conducting the negotiations.

203. *Discussion*. In this section, the Commission tentatively concludes that the public interest in achieving a nationwide interoperable public safety broadband network following bidding for alternative D Block licenses will be served best by making no provision at this time for lifting the Public Private Partnership conditions following such bidding. The Commission further tentatively concludes that the Commission should adopt a rule providing that if a winning bidder should for any reason not be assigned a license following an auction of D Block licenses subject to the Public Private Partnership Conditions, including due to a failure to negotiate an NSA, the Commission shall offer to the other bidder(s) with the next highest bid(s) on the license(s) any license that was not assigned. The Commission directs the Wireless Telecommunications Bureau to specify the circumstances in which the Commission may make such an offer in the context of the final procedures adopted for any auction of D Block licenses.

204. The Commission's separate tentative conclusion to offer multiple regional licenses for the D Block, in addition to a nationwide license, presents the possibility that separate NSAs may apply to separate licenses. The Commission tentatively concludes that the Commission should review and, if in the public interest, may accept NSAs for some licenses, even if acceptable NSAs are not submitted with respect to all licenses.

205. The Commission tentatively concludes that the Commission should continue to provide for Commission resolution of any impasse between the parties negotiating any NSA. The Commission further tentatively concludes that a winning D Block bidder shall not be subject to a default payment in the event there ultimately is no agreement on the terms of the NSA, provided that it accepts any Commission resolution of an impasse in the process of negotiating the NSA.

206. The unique requirement for the D Block that winning bidders to negotiate the terms of an NSA with the PSBL following bidding for the licenses but before being granted the license may produce circumstances not contemplated by the Commission's current rules for processing a winning bidder's license application. For example, the Commission's current rules do not contemplate denial of a winning bidder's application without finding the applicant is either disqualified or in default or both.[440] As discussed herein, however, there may be circumstances in which the Commission will not assign the license even though the winning D Block bidder has not defaulted and, but for the absence of an acceptable NSA, might otherwise be qualified to be licensed. Accordingly, the Commission proposes a rule specific to the D Block setting forth post-auction application procedures consistent with the tentative conclusions reached in this *700 MHz Third FNPRM*.

207. The Commission tentatively concludes that the current record does not demonstrate that any other alternatives for determining the terms of the NSA, either through processes modeled on a Request for Proposal mechanism or other proposals to finalize the NSA prior to an auction, will better serve the public interest than the Commission's initial proposal that the winning bidder(s) in an auction to license the D Block should negotiate the terms of the NSA with the PSBL. The Commission seeks comment on all the tentative conclusions with respect to the process for negotiating the NSA.

[440] Cf. 47 CFR 1.2109(c).

208. Finally, given the proposal to offer the D Block on a regional basis, and the other significant changes proposed herein, the Commission seeks comment on whether the Commission should adopt further changes to the process for establishing the NSA.[441] For example, the Commission seeks comment on whether the Commission should reduce or modify the current negotiation reporting requirements, which obligate the Public Safety Broadband Licensee and the D Block winning bidder to jointly provide detailed reports on a monthly basis on the progress of the negotiations.

a. Action if All or Some D Block Winning Bidders Are Not Assigned Licenses

209. *Comments.* Several parties, predominantly public safety entities, contend that any Commission commitment to license D Block without the Public Private Partnership under any subsequent circumstances might undermine the chances for a successful Public Private Partnership. Specifically, APCO notes that providing for subsequent action on the D Block in the event there is no winning bidder after an auction subject to the Public Private Partnership may create incentives for parties that prefer those other alternatives in order to prevent licensing pursuant to the Public Private Partnership.[442] NATOA *et al.* concurs, as does PSST.[443] TeleCommUnity asserts that any such provision ''may guarantee a failed second auction'' to license the D Block pursuant to the Public Private Partnership.[444] Equipment manufacturer Ericson echoes these public safety commenters.[445]

210. With respect to the particular scenario in which a winning bidder is unable to negotiate a Network Sharing Agreement, PSST supports offering the license to a next highest bidder.[446] Ericson also advocates this approach, as the most direct way to achieve the benefits of the Public Private Partnership, despite the initial winner's failure to negotiate an NSA.[447]

211. In opposition, commercial provider MetroPCS, which advocates abandoning the Public Private Partnership model outright, insists that at a minimum the Commission should provide for an immediate subsequent auction to license the D Block without the Public Private Partnership in the event an auction subject to the Public Private Partnership does not succeed.[448] MetroPCS advocates that the Commission license the D Block without the Public Private Partnership by assigning licenses by CMA and without accepting package, or combinatorial, bids.[449]

212. *Discussion.* The Commission tentatively concludes that the public interest in achieving a nationwide interoperable public safety broadband network following the next auction of D Block licenses will be served best by making no provision for lifting the Public Private Partnership conditions at this time. Experience gained from an attempt to establish a successful Public Private Partnership following the next auction may help chart the future course of the D Block spectrum. Moreover, achieving a successful nationwide interoperable public safety broadband network is more important than accelerating the licensing of the D Block.

213. A number of commenters support offering the D Block license to the next highest bidder following any failure to negotiate an NSA. These comments focus on providing a winning D Block bidder with the best incentives to negotiate an NSA. However, the public interest in achieving a nationwide interoperable public safety broadband network as soon as possible also will be furthered if, in the event the Commission determines it will not assign a license or license(s) to a winning bidder for any reason, such as the winning bidder's default for failure to make post-auction payments or disqualification due to failure to meet the Commission's requirements of a D Block licensee, the Commission offers the relevant license(s) to the other bidder(s) that placed the next highest bid on the same license(s). Consequently, the Commission considers more generally under what circumstances, if any, the Commission may offer a license to another bidder without conducting a second auction.

214. Pursuant to its current rules, the Commission has authority to offer licenses to bidders with the next highest bids without re-opening bidding but only in auctions in which a disqualified winning bidder's bid could not have helped determine the winning bids on other licenses. The Commission's rules currently provide discretion to make such an offer in Commission auctions without package bidding, while precluding it from doing so in auctions with package bidding.[450] The Commission's rules make this distinction because in an auction with package bidding, absent the disqualified bid(s) the next highest bid(s) of other bidder(s) for the same license(s) or package may not have become a winning bid and a group of other bids for different packages of licenses might have become the winning bids. In that case, the disqualified bidder's bid helped determine not only the winner of the licenses subject to the disqualified bid but also the winner of other licenses.

215. Given the public interest at stake in the D Block being used to deploy rapidly a nationwide interoperable broadband network for public safety use, the Commission tentatively concludes that the Commission should have authority to offer a license to the next highest bidder if a winning bidder in an auction of alternative D Block licenses subsequently defaults or is disqualified. The offer will be for the same license won by the initial winning bidder, so that any offer for a PSR license will be made to the next highest bidder for a license using the same technology platform, even if higher bids were placed on a license for the same PSR using a different technology platform or a set of bids for alternative licenses would have won absent the subsequently defaulted or disqualified bid. Moreover, the Commission tentatively concludes that the Commission should be able make such an offer whether bidding on alternative licenses was conducted with or without package bidding. The Commission will adopt a rule specifically for the D Block incorporating these provisions.

216. The Commission reaches this tentative conclusion while recognizing that simultaneously offering alternative licenses for the D Block has similarities to a package bidding auction, even absent package bidding as defined in the Commission's rules.[451] For example, if bidders on regional licenses collectively outbid a bidder for the alternative

[441] 47 CFR 27.1315.

[442] APCO Comments at 40.

[443] NATOA *et al.*Comments at 23, PSST Comments at 43.

[444] TeleCommUnity Comments at 15.

[445] Ericsson Comments at 32.

[446] PSST Comments at 42.

[447] Ericsson Comments at 32.

[448] MetroPCS Comments at 7.

[449] MetroPCS Comments at 20–23.

[450] *See* 47 CFR 1.2109(c) (in the event a winning bidder ''is found unqualified to be a licensee * * * the Commission may * * * offer [the license] to the other highest bidders (in descending order) at their final bids.'') The Commission clarify here that the imposition of liability for a default payment, referenced in the first sentence of Section 1.2109(c), is not a precondition to the Commission offering the license to the next highest bidder. Rather, once a winning bidder is found ''unqualified,'' which in the context of the D Block would include a finding that the winning bidder has been unable to negotiate a Network Sharing Agreement with the PSBL that the Commission will accept, the Commission then ''may * * * offer [the license] to the other highest bidders,'' regardless of whether the winning bidder is liable for a default payment.

[451] *See* 47 CFR 1.2103(b).

nationwide license, it is possible that the bid on one of those regional licenses affected the outcome for all the other regions by making the aggregate bid for the regional licenses greater than the bid for the nationwide license.[452] However, given the importance of rapidly licensing the D Block, the Commission tentatively concludes that, following the simultaneous offer of alternative D Block licenses, whether or not package bidding is available, if the Commission determines that it will not assign any license(s) to an initial winning bidder, the Commission may offer the same license(s) to the next highest bidder, even if a different set of licenses covering the same population would have had a higher aggregate bid in the absence of the initial winning bid. The Commission seeks comment on the Commission's tentative conclusion and whether any alternative would better serve the purposes for making such offers.

217. The Commission tentatively concludes that it would not be appropriate to either require the Commission to offer the license to the next highest bidder or to require the next highest bidder to accept the license. The Commission should retain flexibility to utilize any information obtained from the efforts of an initial D Block winning bidder and the PSBL to negotiate an NSA, which might suggest a superior course to simply offering the license to the next highest bidder. Similarly, not requiring the next highest bidder to accept the license provides that party with the flexibility to consider information developed during the initial negotiations, which may avoid further unsuccessful negotiations for the NSA. The Commission seeks comment on these tentative conclusions.

b. Separate NSAs for Different Licenses

218. Given the Commission's tentative conclusion to offer regional licenses for the D Block, the Commission also must consider whether all the winning bidders for D Block licenses must successfully negotiate NSAs, either jointly or individually, in order for any of them to be licensed, or whether the Commission may license a subset of winning bidders based on their success in negotiating NSAs notwithstanding the inability of other winning bidders to do so. The Commission tentatively concludes that the Commission may accept NSAs that are negotiated between the PSBL and a subset of winning bidders. When negotiating NSAs with winning bidders in a subset of areas to be licensed, the PSBL should take into account the flexibility needed in the future to meet the needs of other unlicensed areas. This should prevent unnecessary limitations being imposed on future NSAs for unlicensed areas as a result of NSAs for areas licensed first. The Commission further notes that the Commission may take such concerns into account in determining whether to accept NSAs in areas where the winning bidder and the PSBL are able to come to agreement.

c. Liabilities of D Block Winning Bidders That Fail To Negotiate an NSA

219. Almost all commenters addressing whether to assess a default payment on a D Block winner that fails to negotiate an NSA would, at least in some circumstances, eliminate the default payment in the event a winning bidder is unable to negotiate an NSA. PSST believes that replacing the default payment with an automatic offer to the second highest bidder will serve the purposes underlying the Commission's default payment rule.[453] APCO contends that ''[a]bsent bad faith, the D Block auction winner should not pay a substantial financial penalty if NSA negotiations fail (though some cost should be imposed to encourage serious good faith negotiations).''[454] While NPSTC believes that the default payment rule, like a reserve price, can serve to help ensure that D Block participants possess the financial, technical and managerial resources to perform responsibly, NPTSC believes that the Commission should provide sufficient assurance through other means, in which case the default payment can be reduced or removed.[455] NATOA *et al.* acknowledge the difficulty that large default payments may create for potential D Block applicants but stress the importance that any winning D Block bidder that does not negotiate in good faith should face ''significant'' penalty or forfeiture.[456]

220. AT&T proposes that a winning bidder should only be subjected to default payments if it acted in bad faith and that it should enjoy a presumption of good faith.[457] In addition, AT&T suggests that the Commission stipulate that any proposal satisfying minimum requirements delineated by the Commission would be deemed per se to be in good faith.[458] Council Tree Communications agrees that absent bad faith, no default payment should be required.[459] Northrop Grumman asserts that the Commission should relieve any winning bidder that negotiates the NSA in good faith from any default liability in the event no agreement can be reached, but does not discuss the standard for determining ''good faith.''[460]

221. MetroPCS, however, would retain the default payment for a winning D Block bidder that fails to negotiate an NSA, apparently regardless of the bidder's good faith.[461]

222. *Discussion.* The Commission tentatively concludes if the Commission dismisses a winning bidder's long-form application solely for the lack of a Commission-approved NSA, a winning D Block bidder should only be subject to a default payment if it chooses not to accept the Commission's resolutions to any and all impasses in the process of negotiating an NSA.[462] Accordingly, if the Commission does not mandate a resolution to an impasse for any reason, or the PSBL refuses to accept a Commission resolution after the D Block bidder does so, the winning D Block bidder will not be subject to a default payment. Given the importance of developing a nationwide interoperable broadband network usable for public safety, the Commission will attempt to resolve any disputes between a winning D Block bidder and the PSBL with respect to the terms of the NSA. The Commission will use its discretion to determine how best to take into account the winning D Block bidder's business plan, as well as the requirements of public safety users, when mandating a resolution. The winning D Block bidder will be subject to a default payment if it refuses to accept any resolution mandated by the Commission. In the

[452] This will not always be the case. A post-auction disqualification of one winning bidder in an auction of alternative licenses or a package bidding auction may not affect other winning bidders for other licenses. For example, bidders for a group of single licenses might have prevailed against a bid on an alternative nationwide license—or package of single licenses—even if one of the original winning bids is replaced by a second highest bid on a single license. The Commission's standard package bidding rule applies a bright line for all package bidding auctions, regardless of the particular bids in the auction.

[453] PSST Comments at 42.

[454] APCO Comments at 38.

[455] NPSTC Comments at 10.

[456] NATOA et al. Comments at 22.

[457] AT&T Comments at 23.

[458] AT&T Comments at 23.

[459] Council Tree Comments at 17. It asserts that if, however, the Commission retains the default payment in all circumstances, then only AT&T, Sprint Nextel, T-Mobile, and Verizon Wireless should be subject to its provisions. Council Tree Comments at 20.

[460] Northrop Grumman Comments at 9.

[461] MetroPCS Comments at 34.

[462] The Commission's competitive bidding rules and precedents governing post-auction defaults would apply to bidders for D Block licenses in other contexts, *e.g.*, failure to make post-auction payments, failure to file an acceptable long-form application, etc.

event that the Commission does not mandate a resolution, or if the D Block winner accepts the Commission's resolution but the PSBL declines to do so, the D Block winning bidder will not be subject to a default payment. Thus, a D Block winning bidder only will be exposed to default payment liability from a negotiation failure if the Commission mandates a resolution that the D Block winner chooses not to accept. The D Block winner's subjective ''good faith'' or ''bad faith'' will not play a role in determining default payment liability. The Commission tentatively concludes that this standard should sufficiently protect D Block bidders against any risk that the PSBL has requirements for the NSA that cannot be reasonably accommodated as part of the D Block winner's business plan. Employing a sweeping ''good faith'' exception to the application of the Commission default rule as advocated by some commenters would place the Commission in the untenable position of having to evaluate the D block winning bidder's motives and business judgments, which could significantly delay the NSA resolution process. Instead, by placing the ultimate decision of acceptance of the negotiated NSA or default in the hands of the D Block winning bidder, it will have the ability to weigh its choices and reach a determination of commercial viability.

223. Although the Commission tentatively concludes that it should not use a ''good faith'' standard in connection with imposing liability on D Block winning bidders based solely on a failure to negotiate an NSA, the Commission asks commenters whether there is another reasonable alternative to its proposal to impose liability based on whether a D Block winning bidder chooses to accept the Commission's resolution of any negotiation disputes. Further, the Commission seeks comment on any solutions to the difficulties of applying a ''good faith'' standard. The Commission also sought comment on whether any winning bidder unable to negotiate an NSA with the PSBL that was acceptable to the Commission should be required to pay the PSBL's costs arising from the unsuccessful negotiations. The Commission tentatively concludes that the Commission should not impose such a requirement. While it might immunize the PSBL against otherwise unnecessary expense, the overall impact on the D Block winning bidders' incentives to negotiate would be minimal. Finally, the administrative process of accounting for expenses directly related to the negotiation might needlessly complicate the negotiation process.

d. NSA Negotiation Process

224. The few comments directly addressing the negotiating process within the context of the Commission's proposal for negotiation of an NSA between the D Block winning bidder and the PSBL are divided on the Commission's role. According to APCO, ''it is important that the FCC continue to be the final arbiter of disputes.'' [463] Northrop Grumman, in contrast, argues that the Commission should assure a winning D Block bidder a ''way out'' by eliminating any binding arbitration of disputes with the PSBL when negotiating the NSA.[464]

225. The City of Philadelphia contends that ''the Commission should require the PSBL to establish and delegate authority to regional entities comprised of public safety agencies to negotiate terms of the NSA that affect their operations, including commercial use of public safety spectrum, priority access for public safety communications, and preemption in cases of local or regional emergency.'' [465]

226. *Discussion.* The Commission tentatively concludes that the Commission should continue to provide for final Commission resolution of any impasse between the parties negotiating the NSA. While the Commission concurs with the view that winning D Block bidder(s) should have a ''way out'' without the imposition of liability in the event that it proves impossible to negotiate an acceptable NSA, the appropriate ''way out'' is to provide for the Commission to determine the final resolution of any dispute in connection with the negotiation of the NSA, including, should the Commission find it in the public interest, requiring the parties to accept specified terms resolving the dispute. The Commission's resolution will be final. The Commission notes that should the Commission conclude that it is unable to arrive at a resolution that the Commission believes is reasonable to require the parties to adopt, the Commission's tentative conclusion is that the Commission will not impose default payment obligations on the winning D Block bidder. In short, a winning D Block bidder unable to reach agreement with the PSBL need only prove its case to the Commission in order to be relieved of any liability for failure to negotiate the NSA. The Commission think this ''way out'' provides the best balance of incentives to negotiate the NSA in good faith, rather than leaving the parties free to reject attempts at resolving any disputes.

227. With respect to the issue of involving local entities in the negotiation of the NSA, the Commission disagrees with Philadelphia's proposal that the PSBL should delegate authority to regional or local authorities to negotiate terms with the D Block licensee. One of the primary roles of the PSBL is to serve as the single public safety representative for purposes of negotiating the NSA. Permitting multiple public safety parties to conduct simultaneous NSA negotiations with the D Block licensee would be inefficient and unwieldly, and would detract from the ultimate goal of achieving a nationwide interoperable broadband network for the entire public safety community. At the same time, the PSBL must carry out its responsibility to negotiate the NSA in a manner that is broadly representative of the public safety community. Accordingly, the Commission tentatively concludes that, while it would be contrary to the PSBL's primary NSA negotiation responsibility to allow individual public safety entities to negotiate directly with the D Block auction winner(s), the PSBL must reasonably afford and accommodate local public safety input into its deliberations, and in doing so, balance local needs with the rules and policies ultimately adopted in this proceeding. Moreover, the limitation on negotiation by local agencies does not preclude them from contributing to the construction of the network with financial or other resources where they are able to do so. Thus, the Commission tentatively concludes that local public safety agencies, the PSBL, and the winning bidder, where they are able to agree to particular terms for local contribution to the network that expand upon a baseline agreement, will be free to do so and incorporate those terms within the larger NSA.

e. RFPs and Other Alternatives for Determining NSA Terms

228. *Background.* In the *700 MHz Second FNPRM*, the Commission sought comment on whether a request for proposal (RFP) approach in conjunction with an auction might serve to establish the terms of the Network Sharing Agreement. More specifically, the Commission sought comment on whether to conduct an auction and then have a number of high bidders submit proposals in response to an RFP outlining the needs of the PSBL or,

[463] APCO Comments at 38.

[464] Northrop Grumman Comments at 9.

[465] Philadelphia Comments at 3–4.

alternatively, whether to issue an RFP outlining public safety needs, then use one of the proposals submitted in response to establish rules on the terms of an NSA, and finally conduct an auction open to all parties interested in complying with those terms.

(i) RFP Approaches

229. *Comments.* Televate proposes an approach along the lines of the Commission's first RFP-related suggestion. More specifically, Televate proposes that the Commission accept proposals to satisfy public safety needs from all bidders willing to meet a minimum bid of $150 million and then score the proposals based on the weight given to various proposal features, including the bid amount.[466] The applicant with the highest score would then negotiate the final NSA details with the PSBL.[467] As part of its proposal for licensing the D Block, Televate proposes that bidders unable to negotiate an NSA would not be subject to a penalty.[468]

230. NTCH, a PCS provider and tower development company, proposes an RFP-related approach roughly along the lines of the Commission's second suggestion. NTCH suggests that would-be ''network managers'' negotiate alternative NSAs with the PSBL and subsequently applicants for licenses would place bids on licenses, specifying with which of the potential NSAs the bidder will comply.[469] High bids for licenses complying with the same NSA would be aggregated and compared with aggregated high bids for licenses complying with the terms of other NSAs. The NSA receiving the highest aggregate amount of license bids would win. The network manager for that NSA would undertake to build out any licenses not assigned to other parties based on the bidding.[470]

231. Leap proposes that the Commission use a contracting process between public safety users and the D Block licensee to determine what network requirements the D Block licensee will satisfy beyond those required by the Commission's commercial rules. Leap appears to advocate that the Commission modify its standard 700 MHz rules by imposing a requirement that the D Block licensee make its network available to public safety, via the PSBL, and negotiate in good faith with public safety users, via the PSBL, regarding any network improvements that the public safety users may require, with the cost of such improvements to be financed by the public safety users.[471]

232. AT&T, Verizon Wireless, and others promote a non-auction RFP approach to achieving the goal of an interoperable nationwide network.[472]

233. *Discussion.* As discussed elsewhere in this Third FNPRM, the Commission tentatively concludes that the detailed Public/Private Partnership proposal set out in this Third FNPRM remains the best option to achieve nationwide build-out of an interoperable broadband network for public safety entities, given the current absence of legislative appropriations for this purpose and the limited funding available to the public safety sector.[473] The Commission finds that the RFP proposals submitted by parties in the record are not as likely to sustain the Commission's commitment to achieving a nationwide interoperable broadband network that meets public safety needs.

234. For instance, the Commission tentatively concludes that Televate and NTCH have not demonstrated that their proposals are workable in their current form. For example, Televate's proposal, while generally describing the relative percentage weight to be applied to different portions of bidder proposals, does not provide any guidance on the difficult question of how to actually score each proposal. With respect to NTCH's proposals, the Commission is not persuaded that the Public Safety Broadband Licensee will be able to negotiate final terms of multiple NSAs with various network operators in the absence of the actual licensees who are to build and construct the ultimate network. Accordingly, any advantages these proposals might have are hypothetical and insufficient for us to adopt them in place of the existing structure of licensing the D Block and having the NSA determined by negotiation between winning bidder(s) and the Public Safety Broadband Licensee.

235. Finally, the Commission tentatively concludes that Leap's proposal offers insufficient assurance that the D Block licensee will in fact negotiate terms that will result in an interoperable broadband network that meets the needs of public safety on a nationwide basis. The most likely outcome of adopting Leap's proposal seems to be a nationwide interoperable commercial network supplemented by a patchwork of regional arrangements meeting the needs of public safety to the extent that local or regional public safety users are able to finance network modifications required to meet their needs. Given that the entire premise of the Public Private Partnership is that public safety users lack sufficient financing to meet their needs, the Commission tentatively concludes that Leap's proposal will not serve the public interest.

(ii) Alternative Commenter Proposals

236. *Comments.* In addition to RFP approaches, several commenters propose alternative approaches to establishing an NSA that diverge from the Commission's initial proposal that a winning D Block bidder and the PSBL negotiate an NSA after an auction to license the D Block. The Mercatus Center at George Mason University proposes that the NSA be negotiated prior to auctioning the license, ''through a negotiated rulemaking,'' with the Commission establishing a ''negotiation committee composed of the current members of the PSBL and the representatives from potential bidders in the auction.'' [474]

237. United States Cellular argues that the PSBL, in conjunction with the public safety service providers, should establish the NSA prior to auction, subject to amendments thereafter.[475] In this context, with the NSA established pre-auction, United States Cellular favors subjecting any D Block winner that does not execute an NSA to the Commission's default payment rules.[476]

238. *Discussion.* The Commission tentatively concludes that the public interest in achieving a nationwide interoperable broadband network would be best served by accepting bids for D Block licenses prior to negotiating the terms of the NSA. The Commission therefore declines to adopt these alternative proposals for determining the terms of the NSA prior to auction. As reflected in the Draft Network Sharing Agreement accompanying this *Third FNPRM*, with the revised rules proposed herein, the Commission provides considerable additional certainty as to the ''baseline'' terms of

[466] Televate Comments at 5.

[467] Televate Comments at 5.

[468] Televate Comments at 6.

[469] NTCH Comments at 5.

[470] NTCH Comments at 5.

[471] Leap Comments at 12–13.

[472] *See, generally,* AT&T Comments, Verizon Wireless Comments.

[473] The Commission notes that AT&T and Verizon Wireless state that their proposals conflict with our prior determination in the *Second Report and Order* that Section 337 of the Communications Act requires that we license spectrum allocated for commercial purposes in the upper 700 MHz band (which includes the D Block) by competitive bidding, and that AT&T asserts that Congress would be willing to revise the statute to permit an alternative approach. *See* AT&T Comments at 7; *see also* Verizon Wireless Reply Comments at 2.

[474] Mercatus Center Comments at 3.

[475] US Cellular Comments at ii–iii.

[476] US Cellular Comments at 21.

the NSA, rendering full negotiation of the NSA in advance of auction unnecessary. Thus, all key baseline requirements to be covered by the NSA have been either defined or identified prior to auction, thereby providing a level of certainty to prospective bidders and ensuring uniformity and consistency among regional networks in the event regional licenses ultimately are implemented. While any given bidder for a D Block license would prefer to have all the terms of the NSA known prior to making its bid, the Commission has tentatively concluded that, with respect to additional matters to be covered by the NSA, negotiation between a winning bidder and the PSBL will be the most effective means to achieving the best result. Terms that are not essential to the successful operation of an NSA may nevertheless be important to the viability of one bidder's business plan—while irrelevant to another. Predetermining such NSA terms prior to conducting an auction risks precluding many potential applicants, as well as denying the winning bidder flexibility that may be essential to achieving a nationwide interoperable broadband network that meets the needs of public safety. The Commission seeks comment on the Commission's tentative conclusions.

7. Auction Issues

239. *Background.* In the *700 MHz Second FNPRM*, the Commission sought comment on four specific issues related to how to conduct an auction to license the D Block subject to the Public Private Partnership. In particular, the Commission requested that commenters address (1) whether to restrict eligibility of entities to participate in the D Block auction based on their access to other 700 MHz spectrum; (2) how to determine any reserve price in such an auction; (3) whether to adopt an exception to the impermissible material relationship rule for determination of designated entity eligibility; and (4) whether the Commission should modify the auction default payment rules. In addition, the Commission solicited comment on whether there were any other changes that should be made to the standard competitive bidding rules with respect to an auction to license the D Block.

240. *Summary.* In this section, the Commission reaches several tentative conclusions with respect to issues related to the next auction to license the D Block. The Commission has tentatively concluded in this *Third FNPRM* that licenses subject to three alternative provisions regarding the technology platform with which the license(s) can be used should be offered. The three alternatives are as follows: a nationwide license with which the winning bidder may use a technology platform of its choice and two types of regional licenses, one in which the licenses are to be used with LTE technology and a second in which the licenses are to be used with WiMAX technology. The Commission tentatively concludes that the Commission will determine which of these alternative licenses to assign based on the results of an auction in which all of the licenses are offered simultaneously.

241. Furthermore, the Commission tentatively concludes, in light of the Commission's primary goal of facilitating the development of a *nationwide* interoperable shared broadband network for the public-private partnership, that it is in the public interest to award licenses to the highest bidder(s) for the license(s) in the technology platform alternative for which license(s) receiving bids cover the greatest aggregate population, provided that at least half of the nation's population is covered. If the provisionally winning bids do not cover at least half of the nation's population, the auction will be cancelled and no D Block licenses will be awarded based on the results of the auction. Thus, the high bid on the nationwide, technology platform alternative would be the provisionally winning bid over any aggregate bid(s) covering less population in the two sets of regional licenses until there are bids on all regions in at least one of the alternatives. In addition, if there are high bids for license(s) in more than one of the alternatives covering equal population, subject to the minimum coverage requirement, licenses will be awarded to high bidder(s) for license(s) in the technology platform alternative that receives the highest aggregate gross bid(s). Finally, to promote competition during the bidding for licenses covering as much population as possible, the Commission tentatively concludes that the Commission should direct the Wireless Telecommunications Bureau to establish auction procedures that will encourage bidding on licenses covering as much population as possible. For instance, with that goal in mind, the Commission intends that provision be made to reduce minimum opening bids on unsold regional licenses during bidding. In addition, in furtherance of the Commission's goal of achieving the widest possible population coverage, the Commission tentatively concludes that package bidding on the sets of regional licenses would be in the public interest and that the Commission should direct the Wireless Telecommunications Bureau to establish procedures for package bidding for this purpose.

242. In addition, the tentative conclusions the Commission reach on issues raised in the *700 MHz Second FNPRM* all reflect the Commission's determination that the public interest in achieving a nationwide interoperable broadband network that meets the needs of public safety can best be promoted by auction provisions that will increase the likelihood of active participation in an auction and competition for the licenses. Accordingly, the Commission tentatively concludes that the Commission should not adopt any restriction on the eligibility to bid for D Block licenses by any entity otherwise eligible to be a D Block licensee based on its spectrum holdings, whether in the 700 MHz band or any other band. The Commission also tentatively concludes that the Commission should direct the Wireless Telecommunications Bureau to not adopt a reserve price greater than any minimum opening bid or bids. The Commission further tentatively concludes that the Commission should codify the substance of the previously granted waiver of the impermissible material relationship rule with respect to designated entity eligibility in connection with the D Block. As discussed in connection with the process for establishing the NSA, the Commission tentatively has concluded the only change needed with respect to the Commission's default payment rules for purposes of the D Block is a modification that limits application of the default payment rule to specific circumstances following the failure to negotiate an NSA with the PSBL that is acceptable to the Commission. Finally, for a variety of reasons, the Commission tentatively concludes that the Commission should not make any of the additional changes to the Commission's competitive bidding rules proposed by commenters. The Commission seeks comment on all these tentative conclusions.

a. Determining Geographic Area and Platform Technology Through Auction

243. The Commission tentatively concludes that rather than require that applicants offer service nationwide or that winners of regional licenses must use a predetermined technology platform, it is in the public interest to offer simultaneously at auction alternative licenses, specifically a single national license for use with a technology platform of the licensee's choice and regional licenses for use with one of two specific technology

platforms. Under this proposal, D Block license(s) would be awarded to the highest bidder(s) for license(s) in the technology platform alternative (i.e., either the nationwide license or one of the sets of regional licenses) for which there are high bid(s) on license(s) covering the greatest aggregate population, subject to conditions of grant, including long-form license application processing. In the event that there is a tie in the greatest aggregate population covered by licenses with high bids in more than one of the alternatives,[477] the Commission would award license(s) to the high bidders for license(s) in the alternative that receives the highest aggregate gross bid(s). Furthermore, the Commission tentatively concludes that the Wireless Telecommunications Bureau should establish, as part of its pre-auction process, specific procedures to implement such an auction, including provisions for reducing minimum opening bids on regional licenses, that will promote bidding on licenses covering as much population as possible, and specific procedures to make available package bidding for groups of regional licenses using the same technology platforms.

244. By offering alternative licenses at auction simultaneously, the Commission can use the auction results to determine which license(s) will facilitate coverage of the maximum population by the nationwide interoperable shared broadband network for the public-private partnership. Specifically, the Commission proposes to offer simultaneously licenses with three alternative conditions regarding the technology platform that may be used by the licensee: ''Alternative (1),'' a nationwide license with the technology platform to be determined by the winning bidder; ''Alternative (2),'' a set of regional licenses for use with the LTE technology platform; and ''Alternative (3),'' a set of regional licenses for use with the WiMAX technology platform. The Commission's goal is to provide for an auction in which applicants could place bids for license(s) covering the geographic area of their choice (nationwide and regional) and subject to specific provisions regarding the required technology platform. More specifically, the Commission seeks to provide certainty to bidders for regional licenses about which technology platform would be required if they become winning bidders. Thus, the Commission tentatively concludes that the Commission should enable an auction in which applicants can place bids that represent the values they assign to licenses for the alternative geographic areas and alternative technology platform requirements described above.

245. In furtherance of the Commission's primary goal of promoting the widest possible population coverage by D Block license(s) subject to the public-private partnership conditions, the Commission tentatively concludes, as an initial matter, that the Commission will not award any licenses unless the total population covered by licenses with high bids meets or exceeds fifty percent (50%) of the U.S. population. Setting the requirement at half of the population should help assure that sufficient licenses are assigned after the next auction to facilitate the ultimate success of a nationwide interoperable broadband network for public safety. The Commission will direct the Wireless Telecommunications Bureau, as part of its pre-auction process, to describe how this requirement will be implemented in the context of the final auction procedures. If provisionally winning bids do not meet this requirement, the auction will be cancelled and no D Block licenses will be awarded based on the results of the auction.

246. The Commission further tentatively concludes that, if the fifty percent (50%) population threshold is met, winning bidders will be determined according to the following criteria. If there is no nationwide bid and there are not high bids on all regional licenses in either set, the bidder(s) with high bid(s) on the D Block license(s) in the technology alternative covering the greatest aggregate population will become the winning bidders after the close of bidding. Similarly, if there is a nationwide bid but not high bids on all licenses in either regional set, the bidder for the nationwide license will become the winning bidder by covering the greatest aggregate population. In the event that there is a bid on the nationwide license and on all licenses in either regional set, the set of licenses with the highest aggregate gross bid(s) will become the winning bidder(s). Similarly, in the event that there is no nationwide bid and the greatest aggregate population is covered equally by the high bids in the two sets of regional licenses, the high bidder(s) for license(s) in the set with the highest aggregate gross bid(s) will become the winning bidder(s). Thus, the Commission will look first to population coverage to determine the winning set of licenses, and to the highest aggregate bid amounts only if the population coverage is equal.[478]

247. The Commission further tentatively concludes that the Wireless Telecommunications Bureau should establish auction procedures that will encourage bidding on licenses covering as much population as possible, including procedures to reduce minimum opening bids on unsold regional licenses during bidding. In particular, the Commission tentatively concludes that the Bureau should lower certain minimum opening bids to the levels set out below if either of the following two triggers is tripped.

248. First, if there is a bid for the nationwide license, neither alternative set of regional licenses has received bids on all 58 licenses, and the sum of the provisionally winning bids for either set of regional licenses is greater than the amount of the nationwide license bid, then the Bureau will lower the minimum opening bids for the regional licenses that do not have bids. Second, if there is not a bid for the nationwide license and there are bids in either set of regional licenses that cover at least half the nation's population, then the Bureau will lower the minimum opening bids for the regional licenses that do not have bids.

249. In particular, in these circumstances, the Commission proposes that the Bureau would lower the relevant minimum opening bids by setting new minimum opening bids for licenses without bids at $0.005 per megahertz per population (MHz-pop). If either of the regional licenses for the Gulf of Mexico does not have a bid, its minimum opening bid will be reduced to $2,500. Under this proposal, the Bureau would not further reduce minimum opening bids during the auction.

250. The Commission also seeks comment on alternative triggers for the

[477] For purposes of determining the extent of population covered by licenses with high bids, the Commission would treat the license for the Gulf of Mexico PSR as having population. Thus, a bid on the nationwide license would cover a greater aggregate population than bids on a set of regional licenses that covered all PSRs other than the Gulf of Mexico PSR. Similarly, bids on one set of regional licenses that include a bid on the Gulf of Mexico PSR license will cover a greater aggregate population than bids on the second set of regional licenses covering the same population but without a bid on the Gulf of Mexico PSR license.

[478] For purposes of determining the extent of population covered by licenses with high bids, the Commission would treat the license for the Gulf of Mexico PSR as having population. Thus, if two sets of licenses otherwise cover the same aggregate population and only one of the license sets includes the Gulf of Mexico PSR, the set of licenses that includes the Gulf of Mexico PSR will be the winning set, regardless of which set has the highest aggregate bid amount. The nationwide license includes the Gulf of Mexico PSR.

reduction of minimum opening bids. For instance, the Commission seeks comment on whether, absent a bid on the nationwide license, there is another level at which the aggregate bids for either set of regional licenses should trigger a reduction in minimum opening bids for regional licenses without bids.

251. The Commission seeks comment on all of these tentative conclusions and on whether such an auction process will best serve the public interest in achieving a nationwide interoperable public safety broadband network. The Commission also seeks comment on whether there are other auction provisions the Commission could establish that would promote the widest possible coverage of the nation's population by D Block licensees, while providing meaningful opportunities for regional bidders that would create interoperable regional networks. Further, the Commission seeks comment on whether the approach suggested by its tentative conclusions is consistent with the Commission's long-held policy of technology neutrality. To the extent commenters believe it is not, the Commission asks that they provide specific input on modifications the Commission could make that would advance technology neutrality. For example, would it be feasible to offer a fourth set of regional licenses that would allow the licensees to choose their own technology? What are the advantages and disadvantages of including such an additional set of regional licenses? Specifically, if licensees can choose their own technologies, how could the Commission assure that regional deployments on licenses offered in the fourth regional set will be fully interoperable consistent with the Commission's fundamental premise that bridging, gateways, and/or IP patches are insufficient for this purpose? Finally, the Commission seeks comment on when the auction should commence.

252. While the *700 MHz Second FNPRM* did not seek comment on the details of auction design, some commenters noted their objections to the possibility of package bidding. United States Cellular opposes the use of package bidding in any auction to license the D Block subject to the Public Private Partnership.[479] The Rural Telecommunications Group also opposed package bidding.[480]

253. The Commission tentatively concludes that the Wireless Telecommunications Bureau should consider specific procedures for package bidding with respect to regional licenses. As discussed elsewhere, the Commission tentatively concludes that the Commission should offer regional licenses in order to enhance the likelihood that an applicant will seek licenses covering as much population as possible. While regional licenses offer applicants greater flexibility than a nationwide license, and bidders can win multiple regional licenses, some potential applicants may prefer to be able to place single bids covering geographic areas that are significantly larger than the roughly state-sized PSRs. Accordingly, the Commission tentatively concludes that the Commission should direct the Wireless Telecommunications Bureau, as part of its pre-auction process, to seek comment on and establish specific procedures for package bidding for regional licenses that might encourage bidding on licenses that cover as much population as possible. With respect to the concerns raised by commenters, the Commission notes that consistent with the Commission's conclusion in the *Second Report and Order*, the Commission anticipates that the Wireless Telecommunications Bureau can implement procedures for an auction with package bidding that will not impose disadvantages on parties that wish to bid on individual licenses offered and direct that it consider procedures that further that objective.[481]

254. Because of the critical importance of achieving a truly nationwide interoperable wireless broadband network for public safety, the Commission proposes to take prompt action to assign any licenses remaining unsold if an auction meets the minimum coverage requirement and yet there is no winning bidder in some regions. Any remaining unsold licenses after an auction satisfies the minimum coverage requirement will be regional licenses conditioned on the use of a particular broadband technology platform. Such licenses will be unsold if no party is willing to make the minimum opening bid for the license, notwithstanding the Commission's reduction of the minimum opening bid to $0.005 per megahertz per population (MHz-pop). Furthermore, regional licenses subject to the Public/Private Partnership will have been sold that cover at least fifty percent (50%) of the nation's population, consistent with the minimum coverage requirement. Thus, licenses sold will provide a foundation for an interoperable public safety wireless broadband network and yet the network will not be nationwide because some regional licenses remain unsold, despite very low minimum opening bids. In order to realize the benefits of a truly nationwide network, the Commission proposes that under such unique circumstances, the Commission tentatively concludes that it should depart from its standard approach of offering commercial licenses to the applicant making the highest bid without reference to the applicant's particular business plan and instead conduct a Request for Proposal (RFP) process, incorporating consideration of applicant's proposals together with their bids.[482]

255. One possible RFP process under such circumstances would be to request the submission of detailed proposals and bids from would-be licensees regarding how they would use the regional license to deploy an interoperable broadband network useable for public safety in the applicable region, in conjunction with the D block licenses already won at the auction. The Commission would determine the contents of the request in consultation with the PSBL, the applicable regional public safety planning committee, and other parties, including public commenters, as may be appropriate. The RFP would specify the license being offered, the applicable Commission rules, any additional requirements or modifications appropriate to the region, and specify the process by which any proposal(s) and bids would be evaluated. Based on this process, the Commission would award the license to the qualified party with the proposal and bid that best meet the requirements. The terms of the proposal would then be incorporated into an NSA for the region. The Commission seeks comment on this approach.

256. Alternatively, The Commission could re-allocate the spectrum so that it can be assigned to the Public Safety Broadband Licensee. The PSBL would then request the submission of detailed

[479] US Cellular Comments at 21–22. Coleman Bazelon asserted with respect to Auction 73 that package bidding and anonymous bidding created difficulties for smaller bidders. See Bazelon Comments, Attachment at 11–14. Cox Communications opposes the use of anonymous bidding in any auction to license D Block that is not subject to the Public Private Partnership. Cox Communications Comments at 13–14. MetroPCS opposes the use of package bidding in any auction to license D Block that is not subject to the Public Private Partnership. MetroPCS Comments at 21–22.

[480] RTG Comments at 11.

[481] *See Second Report and Order* at para. 290.

[482] Because this approach does not involve any procurement by or on behalf of the federal government, the use of the term ''RFP'' would not imply any obligation on the part of the federal government to apply the Federal Acquisition Regulations, 48 CFR Chapter 1, or any other government contracting requirements.

proposals from would-be licensees regarding how they would deploy an interoperable broadband network useable for public safety in the applicable region in partnership with the D block licenses won at the auction. The Commission seeks comment on these options.

257. The Commission seeks comment as well on whether these approaches would be consistent with the Commission's obligations under Sections 309(j) and 337(a) with respect to the allocation of spectrum and the method of assigning D Block licenses. The Commission believes that, at least once the Commission has put up for auction two times the entire D Block portion of the 36 megahertz of spectrum allocated for commercial use under Section 337 and assigned a substantial number of commercial licenses in this Block through competitive bidding to cover at least half of the country, at a time when the DTV transition has already taken place and all the rest of the 36 megahertz of spectrum has been made available by auction and nearly all subsequently licensed, the Commission would have satisfied the allocation and assignment obligations of Section 337(a) for those D Block licenses that have failed to sell. In this regard, the Commission notes that the circumstances here differ significantly from those that informed the Commission's conclusion in the *700 MHz 2d R&O* that it lacked authority under Section 337 at that time to reallocate commercial use guard band spectrum to public safety.

b. Eligibility Restrictions

258. *Comments.* Some public safety and commercial commenters, including public safety entities, equipment manufacturers and large commercial wireless providers, oppose adopting eligibility restrictions on participation in an auction to license the D Block subject to the Public Private Partnership. PSST expressly refrains from taking a position on the issue. Other commenters, primarily smaller commercial entities as well as public interest commenter PISC, support such a proposal.

259. So long as the Public Private Partnership is retained, NATOA et al. do not support any restrictions on eligibility of otherwise qualified potential licensees to bid for the D Block license.[483] APCO contends that the Commission should not impose eligibility restrictions that are unrelated to the goal of developing a national public safety broadband network.[484]

260. The Consumer Electronics Association opposes any restriction on bidding eligibility that might preclude incumbents from bidding, given the incumbents' qualifications and experience.[485] Motorola opines that given the significant investment required to develop and deploy a public-safety grade broadband network, excluding current spectrum holders will put the entire effort in jeopardy.[486] Qualcomm contends that the lack of bidding on D Block in Auction 73 counsels against any restrictions on eligibility in a subsequent auction.[487]

261. Both AT&T and Verizon Wireless also oppose eligibility restrictions, noting that larger wireless providers are precisely the parties best positioned to create a new public safety network.[488]

262. PSST does not take a position on eligibility restrictions at this time.[489] However, PSST advocates that the Commission attempt to assure itself of the intentions of AT&T and Verizon Wireless, in order to avoid an outcome where the possibility that those entities might participate in the auction deters other participants, notwithstanding a lack of interest by either AT&T or Verizon Wireless.[490]

263. Claiming that AT&T, Sprint, T-Mobile, and Verizon Wireless currently have a collective ''chokehold'' on the wireless services industry and that there is a low likelihood that new entrants will have any opportunity other than the D Block, Council Tree Communications asserts that AT&T, Sprint, T-Mobile and Verizon Wireless should be prohibited from participating in an auction to license the D Block.[491] For the same reasons, Council Tree advocates use of the ''attributable interest'' standard previously used as part of the former spectrum aggregation limit to preclude participation by parties in which one of the barred carriers has an attributable interest.[492]

264. Cellular South ''strongly encourages'' the Commission to limit participation in the D Block auction by parties who have significant access to 700 MHz spectrum.[493] In particular, Cellular South endorses the use of the Commission's spectrum aggregation screen used for wireless transactions in connection with licensing of the D Block.[494] Similarly, Leap proposes that the Commission bar entities that won a ''substantial amount of spectrum'' in Auction 73 from participating in an auction to license the D Block.[495] More specifically, Leap proposes that any current license holder or winning bidder capable of reaching more than half of the nation's population with its 700 MHz spectrum be prohibited from participating in an auction to license D Block.[496] NTCH proposes that parties with more than 20 megahertz of 700 MHz spectrum in a given market, primarily AT&T and Verizon Wireless, should be precluded from bidding on the D Block in that market.[497]

265. Citing conditions for competition that it contends worsened as a result of the outcome of Auction 73, PISC advocates the adoption of a spectrum cap of 95 megahertz in a market, as well as the grant of its pending petition for reconsideration which would preclude the C Block licensee from holding the D Block license.[498] In the current proceeding, the Rural Telecommunications Group advocates a per county spectrum cap of 24 megahertz of 700 MHz band spectrum, while it seeks in a separate proceeding to impose a general spectrum cap on spectrum below 2.3 GHz.[499] These restrictions on eligibility to hold a license would go beyond the bidding eligibility restrictions contemplated by the Commission in the *700 MHz Second FNPRM*.

266. *Discussion.* The Commission tentatively concludes that the Commission should not adopt any restriction on the eligibility to bid for D Block licenses by any entity otherwise eligible to be a D Block licensee based on its spectrum holdings, whether in the 700 MHz band or any other band.[500] The *700 MHz Second FNPRM* sought comment on whether a restriction on eligibility to bid in an auction to license the D Block might increase the likelihood that a new entrant to nationwide service in the 700 MHz band

[483] NATOA et al. Comments at 21.

[484] APCO Comments at 38.

[485] CEA Comments at 5.

[486] Motorola Comments at 17.

[487] Qualcomm Comments at 11–12.

[488] AT&T Reply Comments at 12; Verizon Wireless Comments at 22.

[489] PSST Comments at 43. PSST did not amend this position in its Reply Comments. *See, generally,* PSST Reply Comments.

[490] PSST Comments at 44–45.

[491] Council Tree Communications Comments at 14.

[492] Council Tree Communications Comments at 16.

[493] Cellular South Comments at 2.

[494] Cellular South Comments at 3.

[495] Leap Comments at 4.

[496] Leap Comments at 7.

[497] NTCH Comments at 13.

[498] PISC Comments at 6–7.

[499] RTG Comments at 8–11.

[500] As the Commission discuss elsewhere, the Commission tentatively conclude that the Commission should establish eligibility conditions for any advisor to the Public Safety Broadband Licensee.

would have an opportunity to do so. The Commission tentatively concludes that the public interest in maximizing the likelihood that a nationwide interoperable broadband network meeting the needs of public safety will be built outweighs any possibility that a restriction on eligibility to bid in an auction to license the D Block pursuant to the Public Private Partnership will increase the likelihood that a new nationwide service provider will emerge. The Commission notes that this tentative conclusion does not itself bar any new provider from participating in an auction to license the D Block. Moreover, to the extent incumbent providers have cost advantages over a new provider with respect to providing nationwide service that meets the needs of public safety, the Commission tentatively concludes it better serves the public interest to enable those savings to be put to use in facilitating the provision of such service, rather than by requiring the D Block winner to assume additional costs.

267. The Commission decline to adopt PSST's suggestion that the Commission seeks a commitment from nationwide incumbent service providers regarding their intentions to participate in an auction to license D Block. The Commission recognizes the PSST's concern that uncertainty regarding potential competition from incumbents in an auction conceivably could inhibit other potential bidders, notwithstanding an ultimate lack of interest by incumbent nationwide service providers. However, the Commission believes that parties dissuaded from even applying to participate in an auction by such concerns are unlikely to have the commitment or the resources essential to providing service as a D Block licensee. Moreover, the Commission recognizes that incumbent nationwide service providers may be unable to determine their ultimate intentions regarding their interest in the D Block with certainty far enough in advance of an auction for their statements to be of use to other applicants. The Commission does not want to foreclose the possibility that an incumbent carrier might become a licensee by requiring them to make an earlier determination than other parties regarding their interest in doing so. Accordingly, the Commission declines to adopt PSST's suggestion that the Commission seeks a commitment from nationwide incumbent service providers regarding their intentions to participate in an auction to license D Block.

268. The *Second FNPRM* did not seek comment on a spectrum cap or any limitation on the ability of parties to hold licenses for the D Block. As many commenters noted, in the *Second Report and Order*, the Commission considered and rejected restricting eligibility to hold licenses in the 700 MHz band based on competition in the market for broadband services.[501] While the spectrum holdings of parties have changed in the period since that decision, none of the commenters demonstrate that these changes have resulted in any change in the market for broadband services that mandates revisiting the Commission's decision. Thus, even if within the scope of this proceeding, the Commission does not believe the record before us supports any spectrum cap applicable to the D Block at this time. The Commission's conclusion in this regard is without prejudice to the Commission's review of the record in any other proceedings regarding potential spectrum caps.

c. Reserve Price

269. *Comments.* As to the level of any reserve price used in an auction to license the D Block, the consensus view among commenters is that the reserve should be reduced or even eliminated. Numerous commenters, from Council Tree Communications to Verizon Wireless to APCO, supported significantly reducing or eliminating a reserve price altogether. Some commenters, such as Jon Peha, Coleman Bazelon, and Northrop Grumman, even supported eliminating a minimum opening bid. MetroPCS was the only commenter that supported an aggressive reserve price in excess of the minimum opening bid.

270. NATOA et al. assert that, so long as the Public Private Partnership is retained, there is no need for a reserve price in light of the revenues recovered in Auction 73.[502]

271. Ericson asserts that the public interest would be served by a reserve price just high enough to assure that a winning bidder has an economic stake in successfully negotiating an NSA but not one linked to the potential value of the D Block absent the Public Private Partnership.[503] Northrop Grumman asserts that given the financial success of Auction 73 and the need to attract additional interest in the D Block, neither a minimum opening bid nor a reserve price would serve the public interest in an auction to license D Block.[504]

272. Individual commenters Jon Peha and Coleman Bazelon both contend that the D Block winner may need subsidies in order to construct the Public Safety Network and, accordingly, there should be no reserve price.[505]

273. The Commission notes that three academic commenters address the role of the reserve price rather than its level. Sandro Brusco, Giuseppe Lopomo, and Leslie M. Marx (Brusco et al.) address the reserve price from the perspective of using it in order to determine whether to impose additional requirements on the licensee. They contend that meeting a reserve price is likely to be a poor mechanism for balancing public and private interests and for identifying the highest valuing user of the spectrum.[506] As an alternative mechanism, Brusco et al. suggest that the Commission considers using an ''exclusive buyer mechanism'' in which bidders compete for the right to choose between the license with requirements or without requirements (or with fewer requirements), with a discount on a bidder's bid if it chooses to accept the requirements. In such a mechanism, the Commission would set the bid discount to reflect the public benefit of the requirements.[507] Given the Commission's tentative conclusion to retain the D Block license requirements regardless of the bidding in the next auction, this analysis is not relevant to the Commission's current decisions.

274. *Discussion.* The Commission tentatively concludes that the Commission should direct the Wireless Telecommunications Bureau to not adopt a reserve price greater than any minimum opening bid or bids. The successful creation of a nationwide interoperable broadband network meeting the needs of public safety will be of enormous value to the public, quite possibly exceeding the value of any potential revenue for the public from the sale of licenses for the D Block. Thus, in contrast to the Commission's decisions with respect to Blocks A, B, C, and E in Auction 73, the Commission tentatively concludes that it is not in the public interest to adopt a reserve price beyond the minimum opening bid to assure that the adoption of the Public Private Partnership does not have an excessive negative effect on the value of the public spectrum resource. In addition, as many commenters note, the results of Auction 73 more than satisfied the revenue expectations of the Congress with respect to the auction of recovered analog spectrum, as set forth

[501] Parties have filed petitions for reconsideration of that decision, which remain pending before the Commission. *See, e.g.*, PISC Petition for Reconsideration at 2.

[502] NATOA et al. Comments at 20–21.

[503] Ericson Comments at 33.

[504] Northrop Grumman Comments at 9.

[505] Bazelon Comments at 2.

[506] Brusco et al. Comments at 2–4.

[507] Brusco et al. Comments at 5.

in the DTV Act. Furthermore, a reserve price may have negative consequences by discouraging otherwise viable bidders from competing in an auction. Accordingly, no reserve price beyond the minimum opening bid for the next auction to license the D Block is needed to serve a larger policy goal, notwithstanding the Commission's contrary decision in Auction 73. At the same time, the Commission also tentatively concludes that it is in the public interest to direct the Wireless Telecommunications Bureau to establish initial minimum opening bids for each set of alternative D Block licenses that equal or aggregate approximately $750 million.[508] The Commission seeks comment on the Commission's tentative conclusions, including whether the proposed aggregate minimum opening bids should be lowered.

d. Impermissible Material Relationships for Designated Entities

275. *Comments*. Only a select group of commenters addressed this issue. Council Tree Communications, MetroPCS, NATOA *et al.,* and Wirefree Partners all addressed this issue.

276. NATOA *et al.,* favor codifying the waiver, so long as the Public Private Partnership is retained, so as to facilitate the participation of smaller bidders.[509] Council Tree Communications favors codifying the waiver.[510] In addition, Council Tree Communications proposes that the Commission waive all designated entity rule modifications adopted since 2006, in part due to Council Tree Communications pending litigation challenging those rule changes.[511] Wirefree likewise supports codifying the waiver in connection with making other changes to the designated entity rules.[512] Wirefree would liberalize the designated entity rules by returning to a pre-2000 structure of requiring that qualifying entities maintain a minimum equity interest in the applicant while not attributing revenues of other interest holders to the applicant.[513]

277. MetroPCS opposes codifying or even retaining the waiver. MetroPCS argues generally that the Commission should not retain the Public Private Partnership that is the basis of the current waiver.[514] Consistent with its view that the Public Private Partnership will make extreme demands on the D Block licensee's financial resources, MetroPCS argues that that the Commission should not offer bidding credits to applicants for D Block license(s).[515] Further, MetroPCS contends that a D Block exemption from the impermissible material relationship rule is not supported by any ''unique or unusual circumstances surrounding this spectrum.'' [516]

278. *Discussion*. The Commission tentatively concludes that the Commission should codify the substance of the previously granted waiver of the impermissible material relationship rule so that a D Block applicant or licensee with lease or resale (including wholesale) arrangements with other entities involving more than 50 percent of the spectrum capacity of a D Block license will not be ineligible for designated entity benefits solely on the basis of such arrangements.[517] The waiver of the rule was premised on the fact that certain aspects of the Commission's D Block rules with respect to the Public Private Partnership provided adequate safeguards against the abuses the impermissible material relationship rule was intended to prevent. The Commission does not believe that any of the changes in the D Block rules the Commission tentatively proposes today invalidate that premise. Accordingly, the Commission disagrees with MetroPCS's contention that there are no unique or unusual circumstances surrounding this spectrum and tentatively concludes that the Commission should codify the waiver.[518] The Commission seeks comment on this tentative conclusion.

279. The Commission further tentatively concludes that the Commission should not revisit more generally the rules regarding designated entity eligibility as proposed by Council Tree Communications or Wirefree. Without prejudging those proposals, it is more appropriate to address the rules regarding designated entity eligibility generally in a separate proceeding. The Commission can consider its general designated entity eligibility rules in various pending proceedings, including a pending Further Notice of Proposed Rulemaking and pending petitions for reconsideration arising from the Commission's most recent revisions to the designated entity program. The Commission also rejects the notion that Council Tree Communications' attempt to litigate the Commission's existing designated entity rules, which the Commission adopted to further the public interest and applied in the recent auctions of Advanced Wireless Services and 700 MHz licenses, is any basis for suspending those rules in the next auction to license the D Block spectrum.

e. Default Payment Amounts

280. *Comments*. Few commenters addressed whether to modify the default payment outside of the context of a failed attempt to negotiate an NSA. Andrew Seybold states without further discussion that ''the penalty clause should be removed.'' [519] Qualcomm asserts that the default rules are among rules that must be revised but suggests only that the Commission waits until the close of the comment cycle in response to the 700 MHz 2d FNPRM and then convene all affected stakeholders in a meeting or meetings to ensure that the revised rules strike the right balance.[520]

281. *Discussion*. The Commission tentatively concludes that the Commission's existing rules governing the amount of the default payment are generally appropriate for circumstances in which a D Block winning bidder may be liable for a default payment.[521] However, the Commission also tentatively concludes that for an auction of alternative D Block licenses, the Commission should apply the same default payment amount rule regardless of whether or not it package bidding is utilized. Currently, the Commission rules provide that the Bureau, prior to auctions without combinatorial bidding, *i.e.*, package bidding, shall establish the percentage for the additional payment

[508] Appendix E provides proposed minimum opening bids for each of the 58 PSRs, which total approximately $750 million.

[509] NATOA et al. Comments at 21.

[510] Council Tree Communications Comments at 11.

[511] Council Tree Communications Comments at 13.

[512] Wirefree Comments at 9–10.

[513] Wirefree Comments at 9–11.

[514] MetroPCS Comments, passim.

[515] MetroPCS Comments at 34–35.

[516] MetroPCS Comments at 36.

[517] If a D Block applicant or licensee utilizes this exception to the impermissible material relationship rule, it still remains subject to the Commission other designated entity eligibility rules, including the Commission controlling interest, unjust enrichment, attributable material relationship, audit, eligibility event and annual reporting rules. *C.f.*, In Re Waiver of Section 1.2110(b)(3)(iv)(A) of the Commission's Rules For the Upper 700 MHz Band D Block License, Order, 22 FCC Rcd. 20354, 20357 para.8, fn. 21 (2007).

[518] Because this exception does not extend to arrangements for use of the spectrum capacity of licenses other than the D Block license, if an applicant or licensee has an impermissible material relationship with respect to the spectrum capacity of any other license(s), the normal operation of the Commission's rules will continue to render it ineligible for designated entity benefits for the D Block license.

[519] Andrew Seybold Comments at 7.

[520] Qualcomm Comments at 11.

[521] As discussed elsewhere, the Commission has concluded tentatively that the Commission default payment rules should be modified with respect to the circumstances under which they apply to D Block winning bidders following a failure to negotiate an NSA with the PSBL that is acceptable to the Commission.

component of a default payment between 3 and 20 percent. In auctions with combinatorial or package bidding, the Commission's rules provide that this percentage shall be 25 percent. The Commission established this higher percentage for package bidding auctions because of the potential inter-relatedness of bids in such an auction. Because each bidder's bid in a package bidding auction is combined with bids on other licenses to determine the group of winning bids, any one bid may affect which bids win other licenses. Consequently, the Commission concluded that it is particularly important to discourage defaults in package bidding auctions. As the Commission has discussed elsewhere, bids in an auction of alternative licenses are also inter-related, regardless of whether package bidding is available. However, the Commission tentatively concludes that in an auction of alternative licenses for the D Block subject to the 700 MHz Public/Private Partnership, whether or not package bidding procedures are implemented, the Commission should direct the Wireless Telecommunications Bureau to set the percentage of the additional payment for defaults at between 3 and 20 percent, the same range for an auction without package bidding. The Commission tentatively concludes that this range will enable the Bureau to set an appropriate percentage as part of its pre-auction process, taking into account both the special circumstances of the D Block and the final details of the auction process to be used. The Commission seeks comment on this tentative conclusion.

f. Other Competitive Bidding Rules

282. *Background*. In the 700 MHz Second FNPRM, the Commission sought comment on other potential changes to the Commission's competitive bidding rules, potentially to assist new entrants or to serve other public interest purposes.

283. *Comments*. Sprint proposes a system of performance-based bidding credits, in which applicants agreeing to meet any of up to 5 potential stricter performance requirements could receive bidding credits, subject to a requirement to repay the credit, with interest, if the applicant does not meet the stricter standards. AT&T opposes this proposal, characterizing it as ''[a]llowing carriers to eviscerate [minimum] standards by paying additional money.'' [522] Commenter Andrew Seybold proposes that an auction be conducted to determine the party that will manage the Public Safety Network, with incumbent carriers constructing the network in response to other incentives, such as tax credits and access to the network.[523] In this context, he advocates that the Commission lift its anti-collusion rule, in order to enable communications among incumbent carriers and prospective network managers.[524] As part of its own alternative proposal, NTCH suggests that the Commission lift the anti-collusion rule prior to the auction, apparently unaware that the rule does not apply until would-be licensees file applications to participate in the auction.[525] NATOA also suggests ''relaxing'' the Commission's anti-collusion rules, apparently under the mistaken belief that the rules prohibit the creation of bidding consortia prior to the auction.[526] United States Cellular opposes the use of anonymous bidding in any auction to license the D Block subject to the Public Private Partnership.[527] As noted above, Council Tree Communications and Wirefree Partners suggest several changes to the Commission's designated entity program in order to encourage participation by designated entities.

284. *Discussion*. The Commission seeks further comment with respect to the approach advocated by Sprint. As discussed elsewhere in this Third FNPRM, the Commission has reached tentative conclusions with respect to the appropriate level of performance mandates. The Commission asks that commenters address whether it should modify these performance mandates by offering bidding credits to applicants willing to commit themselves to meeting greater requirements. In light of the mandates proposed herein, with respect to which mandates should the Commission offer bidding credits for commitments to exceed the requirements? What would be the level by which the mandate should be exceeded before a credit should be offered? What amount of credit is appropriate for a particular performance requirement? Should the credit only be refunded from the full bid price after the greater requirement is met? Or should the commitment be sufficient to receive a reduction in the bid amount, subject to repayment if the commitment is not fulfilled? Does the appropriate approach change depending on the particular performance requirement?

285. The Commission tentatively concludes that it should not make any of the changes commenters propose to the Commission's competitive bidding rules. As the Commission's anti-collusion rule applies solely after parties file applications to participate in bidding for Commission licenses, the Commission tentatively concludes bidding consortia may form prior to the application deadline without any relaxation of the rule. Furthermore, in light of the Commission's tentative conclusion that the winning bidder for a D Block license should negotiate an NSA only after the conclusion of the auction, there is no reason to relax the anti-collusion rule to permit communications during the auction in connection with the terms of the NSA. Commenters' proposals regarding certain details of auction design, such as anonymous bidding, are best addressed in the context of the Wireless Telecommunication Bureau's pre-auction notice and comment process.[528] Finally, for reasons discussed above, the Commission will not consider in this proceeding the wholesale changes to the Commission's designated entity eligibility rules proposed by Council Tree Communications and Wirefree Partners.

8. Safeguards for Protection of Public Safety Service

286. *Background.* In the *Second Report and Order*, the Commission established a number of measures to safeguard the interests of public safety on an ongoing basis following the execution of the NSA. These measures included: (1) Requirements related to the organization and structure of the 700 MHz Public/Private Partnership; (2) a prohibition on discontinuance of service provided to public safety entities; (3) special remedies in the event that the D Block licensee or Public Safety Broadband Licensee fail to comply with either the Commission's rules or the terms of the NSA; (4) a special,

[522] AT&T Reply Comments at 21.

[523] Andrew Seybold Comments at 4.

[524] Andrew Seybold Comments at 5.

[525] NTCH Comments at 14.

[526] NATOA et al. Comments at 21.

[527] US Cellular Comments at 21–22. Coleman Bazelon asserted with respect to Auction 73 that package bidding and anonymous bidding created difficulties for smaller bidders. *See* Bazelon Comments, attachment at 11–14. Cox Communications opposes the use of anonymous bidding in any auction to license D Block that is not subject to the Public Private Partnership. Cox Communications Comments at 13–14. MetroPCS opposes the use of package bidding in any auction to license D Block that is not subject to the Public Private Partnership. MetroPCS Comments at 21–22.

[528] The Commission detailed the public interest reasons underlying its decision to utilize anonymous bidding in for the auction of 700 MHz Band licenses in the *Second Report and Order* and has used anonymous bidding in a number of Commission auctions for wireless services licenses. Accordingly, absent good cause, the Commission expects that anonymous bidding likely will be employed in the next auction of the D Block.

exclusive process for resolving any disputes related to the execution of the terms of the NSA; and (5) ongoing reporting obligations.[529] These measures addressed concerns that problems arising after the execution of the NSA, whether financial or otherwise, might threaten the build-out of the network or the provision of services to public safety, or that financial problems might lead the D Block licensee to draw its license or the network assets into a bankruptcy proceeding. The Commission did not specifically propose any modifications to these rules in the *Second FNPRM*.

287. *Discussion.* The Commission tentatively concludes that the Commission should retain these rules to safeguard the interests of public safety on an ongoing basis following the execution of the NSA.The Commission continues to believe that the measures the Commission previously adopted are necessary to address the possibility that problems could arise in the implementation of the NSA or the operation of the common network, and that they will protect the interests of public safety without compromising the commercial viability of the 700 MHz Public/Private Partnership.[530]

288. The Commission also notes that, in addition to the quarterly reporting requirements adopted in the *Second Report and Order*, it has proposed elsewhere in this Third FNPRM that the D Block licensee be required to provide to the Public Safety Broadband Licensee monthly network usage statistics. The Commission also finds that these existing and newly proposed reporting requirements address the concerns of some commenters regarding the need for oversight of the D Block licensee's operations. The Commission seeks comment on these tentative conclusions.

289. In addition, the Commission seeks comment on whether a winning bidder for any D Block license should post financial security to ensure that the network will be constructed pursuant to the terms of the NSA and the Commission's rules. In particular, the Commission seeks comment on whether a winning bidder for D Block licenses should be required to obtain an irrevocable standby letter of credit (''LOC'') no later than the date on which its executed NSA is submitted to the Commission. The Commission also seeks comment on whether only applicants that do not meet certain criteria should be subject to this requirement. For example, should the Commission establish criteria, based on bond rating, market capitalization, or debt/equity ratios (combined with minimum levels of available capital) that, if not met, would make an LOC necessary?

290. The Commission seeks comment on the amount of the LOC necessary to ensure uninterrupted construction of the public safety network, as well as the length of time that the LOC should remain in place. For example, the amount of the LOC could be determined on the basis of estimated annual budgets that could accompany the build-out schedule required as part of the NSA, or the Commission could simply require a specific dollar figure for the LOC in an amount that would ensure that construction could proceed for a given amount of time. Should the amount of an initial LOC, or a subsequent LOC, also ensure the continuing maintenance and operation of the network? Under what circumstances should the D Block licensee be required to replenish the LOC?

291. The Commission also seeks comment on whether the LOC should be issued in favor of a trustee and the Commission. What events would constitute a default by the D Block licensee that would allow the trustee or the Commission to make a draw on the entire remaining amount of the LOC? Further, the Commission notes its intent that, in the event of bankruptcy, the LOC should be insulated from claims other than the draws authorized here for the construction and operation of the network. The Commission seeks comment on provisions it might adopt to provide safeguards to this effect.[531]

292. As an alternative to an LOC, the Commission seeks comment on whether it should require parties to obtain performance bonds covering the cost of network construction or operation. The Commission also seeks comment on the types of requirements that bond issuers might impose and whether such requirements are consistent with the public interest in permitting a range of qualified parties to seek D Block licenses. The Commission also seeks comment on the relative merits of performance bonds and LOCs and the extent to which performance bonds, in the event of the D Block Licensee's bankruptcy, might frustrate the Commission's goal of ensuring timely buildout of the network. The Commission also seeks comment on whether there are other protections that it should reasonably seek to ascertain the financial viability of the winning bidder, and ensure construction of the network and its subsequent operation.

9. Local Build-Out Options

293. *Background.* In the *Second Report and Order*, the Commission adopted provisions for early build-out in areas that do and do not have a build-out commitment from the D Block licensee. Under these provisions, for areas with a build-out commitment, some commenters request that public safety entities can, with pre-approval from the Public Safety Broadband Licensee, construct at its own expense a broadband network in that area that conforms to the requirements and specifications of the NSA, and must transfer such network to the D Block licensee for integration into the Shared Wireless Broadband Network. In this case, the public safety entity's compensation would be limited to the costs the D Block licensee would have incurred had it constructed the network in that area itself. Alternatively, rather than constructing the network at its own cost, the public safety entity could provide the D Block licensee with the funds necessary to do so.[532] For areas lacking a build-out commitment from the D Block licensee, public safety entities may, at their own expense, construct and operate an exclusive broadband network that is fully interoperable with the Shared Wireless Broadband Network, pursuant to a spectrum leasing arrangement with the Public Safety Broadband Licensee, and after the Public Safety Broadband Licensee first offers the D Block licensee the option of constructing a network in that area itself.[533]

294. *Comments.* The *Second FNPRM* did not specifically seek comment on changes to the rules on local public safety build-out. However, some commenters advocated for greater

[529] *Second Report and Order*, 22 FCC Rcd at 15467–71 paras. 517–530.

[530] *But see* Letter from Warren G. Lavey, US Cellular, to Marlene H. Dortch, Secretary, FCC, WT Docket 06–150, PS Docket 06–229, filed Sept. 17, 2008 (asserting that the requirement to form bankruptcy remote special entities ''may be detrimental to the rapid, efficient deployment and operation of networks by many potential D Block licensees'').

[531] For example, the Commission could require as a condition of the Public/Private Partnership License that any winning bidder for a D Block license and related parties must first provide the Commission with a legal opinion letter that would state, subject only to customary assumptions, limitations and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. Section 101 et seq. (the ''Bankruptcy Code''), in which the winning bidder is the debtor, the bankruptcy court would not treat the Letter of Credit or proceeds of the Letter of Credit as property of the winning bidder's bankruptcy estate (or the bankruptcy estate of any other bidder-related entity requesting the issuance of the LOC) under Section 541 of the Bankruptcy Code.

[532] *See* 47 CFR 90.1430(b)(1)–(4).

[533] *See* 47 CFR 90.1430(b)(5).

flexibility or autonomy in building out their own networks in the 700 MHz public safety broadband spectrum.[534] APCO cautions that ''while some accommodation for certain local deployments in the context of a national license is necessary, the Commission must avoid creating yet another situation consisting of multiple islands of robust, but incompatible, public safety networks with vast unserved areas in-between.'' [535] Similarly, California asserts that ''[t]he vision of a nationwide Shared Wireless Broadband Network (SWBN) cannot be realized through the deployment of a multitude of [discrete] systems,'' arguing that, given limited economic resources, ''[s]ome public safety agencies in urban areas would likely implement broadband networks, but those in rural areas would find it harder to justify building a local or regional broadband network.'' [536] APCO adds that it continues to support allowing local deployments in areas where the national network is unlikely to be built in the near future, conditioned on eventual integration into the national network.[537]

295. In an *ex parte* letter, Alcatel-Lucent proposes changes to the local build-out rules that would create an additional option allowing a public safety entity to ''enter a spectrum lease agreement with the Public Safety Broadband Licensee and, at its own expense, build out a 700 MHz broadband network in any area where the public-private broadband system has not yet been built.'' [538] Further, if the D Block licensee ''were to seek to build out and operate the public-private network in the same area, it would be required to compensate the public safety entity, based upon commercially reasonable terms, for the value of the network to be integrated into the public-private network.'' [539] Alcatel-Lucent also argues that ''[n]etwork integration and technological evolution are commonplace in commercial mobile networks today, and there is no technological impediment to integration—regardless of technologies.'' [540]

296. *Discussion.* The local build-out rules the Commission adopted in the *Second Report and Order* afford public safety entities with options to build out broadband networks in advance or in lieu of the D Block licensee's build-out, so that public safety agencies may obtain use of advanced broadband networks more quickly if their needs so dictate. Particularly in areas that have a build-out commitment, a public safety entity serving that area may already have invested resources in development of plans to deploy a system that is tailored to that area and thus may have options available to accelerate the deployment of the public safety broadband network to its jurisdiction. At the same time, the Commission recognizes that since the auction of the D Block did not result in a winning bid, there has been an associated delay in the deployment of the nationwide broadband network, which may impact the extent to which some public safety agencies may desire to construct their own networks before a new auction is completed.

297. In its comments, the District of Columbia (the ''District'') made certain requests related to the Regional Wireless Broadband Network (RWBN) [541] operated by the National Capital Region (NCR) jurisdictions, of which the District is a member.[542] The District indicates that $8.2 million in Federal grant funds have been expended to build out the RWBN thus far, primarily within the District.[543] The District further states that it requires certainty to realize a return on further investment in the program.[544] Specifically, the District requests that the Commission authorize it to: (i) Continue deploying and operating the RWBN for 10 years from the date of any final decision on its request, or require the interoperable shared broadband network into which the RWBN would be incorporated to provide service to District users for 10 years free of charge; (ii) use the 700 MHz broadband spectrum for 10 years from the date of a final decision or until the RWBN is incorporated into the interoperable shared broadband network; (iii) use the RWBN to provide service to as broad a range of users as possible, including municipal, state, and Federal users, as well as other users not typically defined as ''first responders;'' and (iv) offer service and assign priority levels to specific groups of users as the District deems appropriate and necessary to sustain the RWBN financially.[545]

298. The Commission tentatively declines to grant the District's request. The Commission finds that granting independent operational authority for a significant number of years to the District as it requests would undermine the goals of this proceeding and be inconsistent with the tentative proposals the Commission have outlined in this Third FNPRM. Further, if, as the District requests, the Commission requires the D Block licensee to provide free service to the District, the Commission is concerned about the resulting impact on the commercial viability of a regional or nationwide D Block licensee. Moreover, as the Commission tentatively concluded elsewhere, the District would not be permitted to provide service to a wider range of users than would be eligible to use the nationwide wireless broadband network. While the Commission appreciates the District's desire to realize a financial return on the investment made in deploying the RWBN, the Commission observes that the NCR on multiple occasions knowingly undertook such action entirely at its own risk.[546]

299. While the Commission tentatively declines to grant the District's specific requests outlined above, the Commission remains

[534] *See* Kentucky Wireless Interoperability Executive Committee Comments at 1, San Francisco Comments at 3–4; Philadelphia Comments at 5–8, NYPD Comments at 7–10, District of Columbia Comments at 8–15.

[535] *Id.* at 3.

[536] California Comments at 7.

[537] *See* APCO Reply Comments at 3 n.2.

[538] Alcatel-Lucent Ex Parte at 2.

[539] *Id.*

[540] *Id.*

[541] NCR deployed the RWBN in the 700 MHz Band pursuant to a waiver issued by the PSHSB in January 2007. *See* Request by National Capital Region for Waiver of the Commission's Rules to Allow Establishment of a 700 MHz Interoperable Broadband Data Network, WT Docket No. 96–86, *Order*, 22 FCC Rcd 1846 (PSHSB 2007) (*NCR Waiver Order*). NCR operates the RWBN pursuant to a grant of a request for Special Temporary Authority. *See* Special Temporary Authorization, File No. 0003149202, Call Sign WQHY489 (Nov. 1, 2007); Special Temporary Authorization, File No. 0003397425, Call Sign WQHY489 (April 28, 2008); Special Temporary Authorization, File No. 0003151108, Call Sign WQHY490 (Nov. 1, 2007); Special Temporary Authorization, File No. 0003397644, Call Sign WQHY490 (April 28, 2008).

[542] The NCR consists of eighteen jurisdictions: The District of Columbia, Montgomery and Prince Georges Counties of Maryland, and the cities of Gaithersburg, Rockville, Takoma Park, Bowie, College Park, and Greenbelt; Arlington, Fairfax, Loudon and Prince William Counties of Virginia, and the cities of Alexandria, Falls Church, Town of Leesburg, Manassas, and Manassas Park. *See* The National Capital Planning Act of 1952, 40 U.S.C. 71.

[543] District Comments at 14.

[544] District Comments at 13.

[545] District Comments at 3.

[546] As the Commission observed in the *Second Report and Order*, in requesting its waiver to operate its broadband network, NCR specifically represented that it ''fully underst[ood] and accept[ed] that as a result of any rulemaking changes the Commission may make, the NCR will have to comply with the results of such rule making,'' including possible change of its network technology to a different standard or transition to a public safety broadband network managed by a single national licensee. *Second Report and Order* at para. 477 (*citing NCR Waiver Order* at 1849 para. 8, quoting letter from Bill Butler, NCR Interoperability Program, OCTO-Wireless Programs Group, to Marlene H. Dortch, Secretary, FCC (Jan. 29, 2007) and attached e-mail from Robert L. LeGrande, II, NCR Interoperability Program, Deputy Chief Technology Officer, District of Columbia, to Dana Shaffer, Deputy Chief, Public Safety and Homeland Security Bureau, FCC (Jan. 28, 2007)).

sensitive to the fact that the District has expended significant efforts to achieve broadband interoperability in the near-term for public safety users within the District through the RWBN. Therefore, consistent with the *Second Report and Order*, the Commission continues to contemplate that the Public Safety Broadband Licensee will consult NCR in negotiating the schedule for buildout of the shared interoperable network in the area served by the RWBN, and will provide NCR a reasonable amount of time to make any modifications necessary to incorporate the RWBN into the shared network.[547] In this manner, the Commission hopes to minimize any delays that the District might otherwise experience in realizing the benefits of an interoperable broadband network geared towards public safety needs. In addition, to the extent that the D Block licensee building out the NCR areas seeks to utilize any hard assets of the RWBN, such as tower facilities, in constructing the 700 MHz interoperable shared broadband network, NCR may seek appropriate compensation for the use of such assets.

300. As noted above, Alcatel-Lucent advocates changes to the Commission's local build-out rules to permit local public safety to build-out immediately, and thus prior to completion of a reauction of the D Block and selection of the air interface that would support nationwide interoperability. Alcatel-Lucent argues that, regardless of the technology deployed, the local network could be readily integrated into the regional or nationwide D Block license, and proposes that the D Block licensee would be required to ''compensate the local public safety entity based upon commercially reasonable standards.'' [548]

301. While early deployment of public safety broadband networks would afford public safety agencies with the benefits of such networks more quickly, the Alcatel-Lucent proposal also poses a number of concerns. For example, unlike the Commission's current rules, which only contemplate the early build-out of systems utilizing the same technology as the D Block licensee, a public safety entity that engages in early deployment risks choosing a technology that is not compatible with the technology that will be deployed later by the D Block licensee. Although Alcatel-Lucent argues that any technology deployed by a public safety entity could be integrated into the regional or nationwide broadband network, the Commission has tentatively concluded that the nationwide interoperable network should have the same air interface technology. Accordingly, the Commission seeks comment on how it can ensure that a public safety entity engaging in such early build-out selects a compatible technology that is fully interoperable with the Shared Wireless Broadband Network(s), meaning consistent with the Commission's tentative conclusions elsewhere concerning interoperability requirements for all operations in the 700 MHz public safety broadband spectrum, and thus not via gateways and bridges.

302. The Commission also seeks comment on Alcatel-Lucent's proposal that a D Block licensee seeking to operate in the area be required to compensate early public safety builders based upon ''commercially reasonable standards.'' Should the Commission replace its current rule, which limits compensation for early build to the costs that the D Block licensee would have incurred, with one based on ''commercially reasonable standards?'' How would ''commercially reasonable terms'' be determined? What if the network constructed by the local public safety agency was of little worth to the D Block licensee, whether due to technology choices, network design, or a D Block licensee's existing resources in the area? Would reliance on such a basis for compensation lead to significant or intractable disputes either at the Commission or in courts?

303. Given the potential costs and benefits in allowing early deployment of wireless public safety broadband networks, the Commission seeks comment on the appropriate balance between ensuring flexibility for public safety entities to engage in early deployment and providing some mechanism for compensation, if not under the existing rules, while also ensuring the Commission's goal of achieving nationwide interoperability across networks and maintaining the financial viability of the 700 MHz Public/Private Partnership. To what extent should public safety entities be allowed to deploy in advance of future build out by the D Block licensee? Are the Commission's existing rules on compensation for early build-out sufficient, or should some allowance be made for compensation for early build-out of systems using technologies that are different and incompatible with those to be deployed by the D Block licensee for that area? Would allowing compensation for early deployment of incompatible technologies stand as a disincentive to auction participation by commercial entities?

10. Open Platform/Wholesale Conditions

304. *Background.* In the *Second Report and Order* the Commission declined to restrict the D Block licensee to operating exclusively on a ''wholesale'' or ''open-access'' basis.[549] The Commission concluded that it would not serve the goals of the Public/Private Partnership to impose special wholesale or open-access requirements on the D Block licensee.[550] Instead, the Commission provided the D Block licensee with the flexibility to provide wholesale or retail services or other types of access to its network that comply with the Commission rules and the NSA.[551] The Commission reasoned that the D Block licensee has the flexibility to choose the commercial service it will provide based on its determination of market needs; and that this flexibility improves the viability of the 700 MHz Public/Private Partnership and serves the interests of public safety.[552] With respect to services offered to public safety, the Commission noted that the Public Safety Broadband Licensee will have the right to determine and approve specifications for public safety equipment used on the network and the right to purchase its own subscriber equipment from any vendor it chooses, to the extent such specifications and equipment were consistent with reasonable network control requirements established in the NSA.[553]

305. In the *Second FNPRM,* the Commission sought comment on whether the Commission should require the D Block licensee to operate on an exclusively wholesale or open access basis.[554] The Commission asked for comment on how an open access environment might affect public safety, and whether the Commission needs to clarify or revise the operational responsibilities of the D Block and the Public Safety Broadband Licensees if the Commission were to adopt a wholesale approach.[555] Further, the Commission sought comment on whether maintaining a flexible approach would improve the viability of the Public/Private Partnership.[556]

306. *Comments.* In response to the *Second FNPRM,* the Commission received some comments on this subject

[547] *See Second Report and Order* at para. 478.

[548] Alcatel-Lucent Ex Parte at App. p. 2.

[549] *Second Report and Order* at para. 545.

[550] *Id.*

[551] *Id.*

[552] *Id.*

[553] *Second Report and Order* at paras. 405–406, 546.

[554] *Second FNPRM* at para. 187.

[555] *Id.*

[556] *Id.*

matter. Motorola recommends that the Commission imposes an open platform condition and allows public safety to use any device or application provided it does not harm the network.[557] Wireless RERC recommends consideration of an open access network contending that such a condition would allow public safety entities access to numerous suppliers of IP-based communications equipment and systems capable of interconnecting with the network.[558] It believes that this would allow the communication of emergency information to be accessible in many formats.[559] Cellular South argues that the Commission should impose a mandatory wholesale condition as a way to give smaller carriers entry into the market.[560] PISC states that the Commission should impose both open access and wholesale conditions as they will help enhance competition and further public interest goals.[561]

307. Qualcomm argues that the Commission should not impose an open platform condition or forbid any particular business models.[562] AT&T argues that the Commission should not impose an open access platform or a mandatory wholesale condition because it violates the flexible use approach which has proven to produce the best technological and business practices.[563] It further asserts that a public/private partnership will fail if it is constrained by conditions not compatible to the reality of the market.[564] Google recommends that the Commission not impose open access or wholesale conditions for the present time, and states they should keep a careful watch on anti-consumer practices and intervene with such measures when appropriate.[565] Coleman Bazelon argues against imposing a wholesale condition because the spectrum will be most valuable to the larger carriers.[566] Ericsson argues against imposing a wholesale condition because such limitations on the business plan of the D Block licensee would make bidding less attractive to many potential bidders.[567] CTIA recommends that the Commission base its rules on the same market oriented, flexible-use service rule model that has successfully created today's wireless marketplace.[568] Verizon notes that the Commission should reject calls to impose wholesale-only and open access requirements.[569] Motorola supports ''open access for public safety subscriber equipment and applications from multiple sources that meet public safety requirements.'' [570]

308. *Discussion.* In the *Second Report and Order,* the Commission declined to impose broad open access or wholesale service requirements in the 700 MHz band because the Commission found that it would not serve the goals of the Public/Private Partnership to mandate these requirements on the D Block licensee specifically.[571] Rather, the Commission decided that the D Block licensee should be given the flexibility to choose the commercial service it would provide.[572] In the Commission determination, the Commission noted that the effects of an open access environment were unknown, and, before it was mandated, it was necessary to understand the impact that mandatory provisions would have on the public safety environment.[573] In this Third FNPRM, the Commission tentatively concludes not to impose a mandatory wholesale or open access condition on the D Block licensee. Comments in support of mandatory wholesale and open access provisions have not established the impact that these provisions would have on the public safety environment and the goals of the Public/Private Partnership. The Commission reaffirms that the D Block licensee has the flexibility to provide wholesale or retail services or other types of access to its network to comply with the Commission's rules and the NSA.[574] The Commission believes that this flexibility improves the viability of the Public/Private Partnership, serves the interests of public safety, and is supported by the record.

309. With respect to subscriber equipment and applications offered to public safety, the Commission proposes to retain the flexibility afforded to public safety subscribers in the *Second Report and Order.* Specifically, the Commission proposes to retain the rights of the Public Safety Broadband Licensee to determine the public safety equipment and applications that would be used on the network. The Commission also proposes to retain the rights of public safety entities to purchase their own subscriber equipment and applications from any vendor they choose, provided that the equipment and applications they purchase are consistent with reasonable network management requirements and approved by the Public Safety Broadband Licensee. The Commission seeks comment on these proposals.

11. Other Rules and Conditions

310. In the *Second FNPRM,* the Commission sought comment generally on whether, aside from the subjects specifically that the Commission specifically discussed, the Commission should modify any other aspects of the rules or conditions for the 700 MHz Public/Private Partnership. The Commission tentatively concludes that, aside from the specific changes the Commission has proposed in this *Third FNPRM,*[575] the Commission should retain the existing rules governing the 700 MHz Public/Private Partnership largely without modification.

C. Public Safety Issues

1. Eligible Users of the Public Safety Broadband Spectrum

311. *Background.* Section 337(a)(1) of the Communications Act requires the Commission to allocate 24 megahertz of spectrum between 746 MHz and 806 MHz for ''public safety services.'' [576] Section 337(f)(1) of the Act defines ''public safety services'' as follows:

(f) Definitions—For purposes of this section:

(1) Public Safety Services—The term ''public safety services'' means services—

(A) The sole or principal purpose of which is to protect the safety of life, health, or property;

(B) That are provided—

(i) By State or local government entities; or

(ii) By nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and

(C) That are not made commercially available to the public by the provider.[577]

In establishing license eligibility rules for the 700 MHz public safety band in Section 90.523 of the Commission's

[557] Motorola Comments at 11.

[558] Wireless RERC Comments at 14.

[559] Wireless RERC Comments at 15.

[560] Cellular South Comments at 3–4.

[561] PISC Comments at 7–10.

[562] Qualcomm Comments at 11.

[563] AT&T Comments at 18; AT&T Reply Comments at 10–14.

[564] AT&T Comments at 18.

[565] Google Comments at 10; Google Reply Comments at 1–4.

[566] Coleman Bazelon Comments at 22.

[567] Ericsson Comments at 35.

[568] CTIA Reply Comments at 8–9.

[569] Verizon Wireless Reply Comments at 19 n.43.

[570] Motorola Comments at 7.

[571] *Second Report and Order,* 22 FCC Rcd at 15476–77, 15478 paras. 545, 549.

[572] *Id.,* 22 FCC Rcd at 15476–77 para. 545.

[573] *Id.* (*citing* NPSTC *700 MHZ Further Notice* Reply Comments at 8 –9).

[574] Applicable rules include, but are not limited, provisions regarding leasing in Subparts Q and X of Part 1 of the Commission's rules.

[575] The specific rule changes the Commission proposes are included herein.

[576] 47 U.S.C. 337(a)(1).

[577] 47 U.S.C. 337(f).

rules the Commission sought to mirror these eligibility requirements.[578]

312. Section 90.523(e) includes specific eligibility provisions applicable to the Public Safety Broadband Licensee.[579] Like the narrowband license eligibility provisions set forth in Sections 90.523(a)–(d),[580] the Commission intended the provisions of Section 90.523(e) to ensure that the use of the 700 MHz public safety broadband spectrum, under the auspices of the Public Safety Broadband Licensee, be consistent with the statutory definition of ''public safety services'' in Section 337(f)(1)—both to ensure that the band remained allocated to such services, as required by Section 337(a)(1)—as well as to focus the Public Safety Broadband Licensee exclusively upon the needs of public safety entities that stand to benefit from the interoperable broadband network.[581]

313. In the *Second FNPRM,* the Commission identified certain aspects of Section 90.523 that may need clarification. First, the Commission identified two elements of the statutory definition of ''public safety services'' that the eligibility rules that could be construed as not applying explicitly enough to the Public Safety Broadband Licensee: (1) The Section 337(f)(1)(A) element that requires that the ''sole or principal purpose * * * is to protect the safety of life, health, or property;'' and (2) the Section 337(f)(1)(C) element that bars such services from being ''made commercially available to the public by the provider.'' [582] Second, the Commission observed that there may be some ambiguity as to the applicability of the narrowband eligibility provisions in Sections 90.953(a)–(d) to the Public Safety Broadband Licensee.[583] Accordingly, the Commission sought comment as to whether the Commission should make minor amendments to Section 90.523 to: (a) Clarify that the services provided by the Public Safety Broadband Licensee must conform to all the elements of the statutory definition of ''public safety services;'' and (b) clearly delineate the differences and overlap in the respective eligibility requirements of the narrowband licensees and the Public Safety Broadband Licensee.[584]

314. As a corollary to examining whether the services provided by the Public Safety Broadband Licensee must conform to all the elements of the statutory definition of ''public safety services,'' the Commission also examined whether, under Section 337 of the Act and in furtherance of the policies that led to the creation of the Public Safety Broadband Licensee, the eligible users of the public safety broadband network that are represented by the Public Safety Broadband Licensee should be restricted to entities that provide ''public safety services,'' as defined in Section 337 of the Act.[585] Specifically, the Commission observed that the question of whether the Public Safety Broadband Licensee's service qualifies as a ''public safety service'' under Section 337(f)(1) of the Act depends in part on the nature of the spectrum use by the entities to which it grants access to the shared broadband network.[586]

315. The Commission further observed that to the extent that these entities are public safety entities that are accessing the shared network to provide themselves with communications services in furtherance of their mission to protect the safety of life, health or property, the Public Safety Broadband Licensee's services related to the public safety broadband spectrum would conform to the statutory definition of ''public safety services'' and would comport with the Commission's obligation under Section 337(a)(1) of the Act to allocate a certain amount of spectrum to such services.[587] Under this interpretation, only entities providing public safety services, as defined in the Act, would be eligible to use the public safety spectrum of the shared network of the 700 MHz Public/Private Partnership on a priority basis, pursuant to the representation of the Public Safety Broadband Licensee.

316. In arriving at this interpretation, the Commission observed that, under the statutory definition, a service might be considered a ''public safety service'' even if its purpose is not solely for protecting the safety of life, health or property, so long as this remains its ''principal'' purpose.[588] Taken a step further, the service provided by the Public Safety Broadband Licensee—providing public safety entities access to the spectrum for safety-of-life/health/property communications operations—could conceivably include the provision of spectrum access to public safety entities for uses that do not principally involve the protection of life, health or property, provided that the principal purpose of the Public Safety Broadband Licensee's services, on the whole, is to protect the safety of life, health or property.[589] The Commission further observed, moreover, that such a literal reading of the statute could permit the Public Safety Broadband Licensee to provide spectrum access to a small number of entities having little or no connection to public safety whatsoever, and potentially result in entire pockets within its nationwide service area served only by such non-public safety entities.[590]

317. Because such a result would appear inconsistent with the spirit of Section 337(f)(1)(A) of the Act, the Commission sought comment on whether, and to what degree, the Public Safety Broadband Licensee would be statutorily precluded by that subsection from representing and allowing any entity to use the network for services that are not principally for public safety purposes.[591] The Commission also sought comment on whether there are other grounds—specifically, the authorization requirement of Section 337(f)(1)(B)(ii) of the Act and/or public interest reasons—for prohibiting the Public Safety Broadband Licensee from providing network access to non-public safety entities or permitting public safety entities that it represents to use the network for services that do not have as their principal purpose the protection of the safety of life, heath or property, and instead requiring such non-permitted users, including critical infrastructure industry (CII) users, to be treated as commercial users who would obtain access to spectrum only through

[578] 47 CFR 90.523.

[579] 47 CFR 90.523(e).

[580] 47 CFR 90.523(a)–(d).

[581] *Second Report and Order,* 22 FCC Rcd at 15421 para. 373. Specifically, the Commission required that the Public Safety Broadband Licensee satisfy the following eligibility criteria: (1) No commercial interest may be held in this licensee, and no commercial interest may participate in the management of the licensee; (2) the licensee must be a non-profit organization; (3) the licensee must be as broadly representative of the public safety radio user community as possible, including the various levels (*e.g.*, state, local, county) and types (*e.g.*, police, fire, rescue) of public safety entities; and (4) to ensure that the Public Safety Broadband Licensee is qualified to provide public safety services, an organization applying for the Public Safety Broadband License was required to submit written certifications from a total of at least ten geographically diverse state and local governmental entities, with at least one certification from a state government entity and one from a local government entity. *See* 47 CFR 90.523(e).

[582] *Second FNPRM,* 23 FCC Rcd at 8060 para. 28.

[583] *Second FNPRM,* 23 FCC Rcd at 8060 para. 28.

[584] *Second FNPRM,* 23 FCC Rcd at 8060 para. 28.

[585] *Second FNPRM,* 23 FCC Rcd at 8060–61 para. 29.

[586] *Second FNPRM,* 23 FCC Rcd at 8061 para. 30.

[587] *Second FNPRM,* 23 FCC Rcd at 8061 para. 30.

[588] *Second FNPRM,* 23 FCC Rcd at 8061 para. 31 (*citing* 47 U.S.C. 337(f)(1)(A)).

[589] *Second FNPRM,* 23 FCC Rcd at 8061 para. 31.

[590] *Second FNPRM,* 23 FCC Rcd at 8061–62 para. 32.

[591] *Second FNPRM,* 23 FCC Rcd at 8061–62 para. 32.

commercial services provided solely by the D Block licensee.[592]

318. *Comments.* The Commission did not receive any comments with respect to whether the Commission should make minor amendments to Section 90.523 of the Commission's rules to: (a) Clarify that the services provided through the Public Safety Broadband Licensee must conform to all the elements of the statutory definition of ''public safety services;'' and (b) clearly delineate the differences and overlap in the respective eligibility requirements of the narrowband licensees, set forth in Sections 90.953(a)–(d) of the Commission's rules, and the Public Safety Broadband Licensee, set forth in Sections 90.953(e) of the Commission's rules to eliminate any ambiguity regarding the applicability of the former to the latter.

319. The Commission did, however, receive a number of comments addressing the question of whether the Public Safety Broadband Licensee should be prohibited both from providing network access to non-public safety entities (*i.e.*, entities that would not be eligible to hold licenses under Section 337 of the Act), and from allowing the public safety entities that it represents to use the network for services that do not have as their principal purpose the protection of the safety of life, heath or property. The National Public Safety Telecommunications Council (NPSTC), for example, observed that ''[t]here are common situations across the country where restoring critical infrastructure—gas, electric, water, transportation or telecommunications—is at least as important as public safety use.'' [593] On that basis, NPSTC argued that ''access [to the shared network] needs to be flexible and managed real-time, allowing the subscribers who are critical to the operation at hand, whatever and whomever that might be, use of required network resources.'' [594] Under NPSTC's approach, access to the shared network by CII entities (and Federal agencies) ''would be directed to emergency circumstances and not general use of the network.'' [595] Other commenters expressed similar views.[596]

320. A few parties, however, argued a more circumscribed view that eligibility for access to the shared network through the Public Safety Broadband Licensee should be limited to entities that have as their principal purpose the protection of safety of life, health or property. APCO, for example, asserted that ''there are significant questions as to whether the Communications Act would allow the PSBL to offer service on public safety spectrum to entities not eligible for public safety spectrum under Section 337 of the Act.'' [597] Accordingly, APCO suggested that the Commission ''should require that the D Block licensee provide CII entities with priority access to the commercial portion of the network (secondary, however, to public safety where relevant) consistent with current CII/wireless carrier agreements.'' [598] The National Regional Planning Council (NRPC) asserted that the ''principal purpose of the [shared network] spectrum should remain for public safety use [and] the PSBL should provide network access only to public safety entities that have as their principal purpose the protection of safety of life, health or property.'' [599]

321. *Discussion.* As a preliminary matter, the Commission tentatively concludes that the Commission should revise Section 90.523 of the Commission's rules to: (a) Clarify that the services provided through the Public Safety Broadband Licensee must conform to all the elements of the statutory definition of ''public safety services;'' and (b) clearly delineate the differences and overlap in the respective eligibility requirements of the narrowband licensees, set forth in Sections 90.953(a)–(d), and the Public Safety Broadband Licensee, set forth at Section 90.953(e) to eliminate any ambiguity regarding the applicability of the former to the latter. The Commission believes these clarifications would be accomplished through the rule revisions the Commission is proposing (discussed below) to address the issue of eligibility to access the public safety broadband network.

322. With respect to the question of which entities should be eligible to access the public safety broadband network through the Public Safety Broadband Licensee, while the Commission recognizes and appreciate the important functions that CII entities can serve in supporting public safety entities during the resolution of emergencies, the Commission tentatively concludes that both statutory limitations and policy considerations preclude CII entities from accessing the public safety broadband network. The Commission proposes specific amendments to Section 90.523 of the Commission's rules included in this document to effect such tentative conclusion and to effect the general clarifications discussed above.

323. In arriving at the Commission's tentative conclusion, the Commission necessarily begins with an analysis of Section 337 of the Act. Section 337(a)(1) requires the Commission to allocate 24 megahertz of spectrum between 746 MHz and 806 MHz for ''public safety services.'' [600] As stated above, the statutory definition of ''public safety services,'' which is set forth in Section 337(f) of the Act, provides as follows:

(f) Definitions—For purposes of this section:

(1) Public Safety Services—The term ''public safety services'' means services—

(A) The sole or principal purpose of which is to protect the safety of life, health, or property;

(B) That are provided—

(i) By State or local government entities; or

(ii) By nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and

(C) That are not made commercially available to the public by the provider.[601]

Section 337(f)(1) specifies, among other criteria, that the sole or principal

[592] Second FNPRM, 23 FCC Rcd at 8061–62 para. 32.

[593] NPSTC Comments at 17.

[594] NPSTC Comments at 17–18.

[595] NPSTC Comments at 18. NPSTC recommends that the Commission ''parallel the core concept of its rules contained in section 90.523. That provision recognizes that critical infrastructure entities that are state or local government agencies may be licensed. It would allow access for Non Government Organizations (NGOs) that have the support of the relevant local or state government agency and the PSBL.'' *Id.*

[596] *See, e.g.*, AASHTO Comments at 12; PSST Comments at 21; NATOA *et. al.* Comments at 13; TDC Comments at 2–3; International Municipal Signal Association, International Association of Fire Chiefs, Inc, Congressional Fire Services Institute, and Forestry Conservation Communications Association Joint Comments at 10; American Hospital Association Comments at 3; Association of Emergency Medical Technicians Comments at 4; Mayo Clinic Comments at 4; City and County of San Francisco Comments at 4 n.3; TeleCommUnity Comments at 10; Ericsson Inc. Comments at 5; District of Columbia Comments at 3; Intelligent Transportation Society of America Reply Comments at 3. Joe Hanna Reply Comments at 4; American Petroleum Institute Reply Comments at 5–7.

[597] Association of Public-Safety Communications Officials-International, Inc. Comments at 8.

[598] Association of Public-Safety Communications Officials-International, Inc. Comments at 9.

[599] National Regional Planning Council Comments at 6. *See also* International Association of Fire Fighters Comments at 5.

[600] 47 U.S.C. 337(a)(1).

[601] 47 U.S.C. 337(f).

purpose of the service for which the 700 MHz public safety spectrum is used must be to protect the safety of life, health, or property.[602] While CII entities, such as utility companies, may play an important role on occasion supporting public safety entities to carry out their mission of protecting the safety of life, health, or property, this role is ancillary to the entities' principal purposes, such as providing electricity. By way of contrast, with respect to concerns raised by the American Hospital Association and other health care representative associations, the Commission observes that under these proposed amendments, the sole or principal purpose of the communications needs of hospitals and other health care facilities as well as ambulance and Emergency Medical Services involved in the provision of emergency medical care, are innately to protect the safety of life, health, or property.[603] For example, the Commission envisions that in providing health care services to the sick or injured, responding to accident scenes, or in addressing public health emergencies such as pandemics or poisonous gas exposure, hospitals, health care facilities, and emergency medical service departments would be eligible users of the 700 MHz public safety spectrum.

324. Because CII entities would not be eligible to access the 700 MHz public safety spectrum under Section 337, they also would not be eligible to gain access to this spectrum through the Public Safety Broadband Licensee. Even if authorized by a governmental entity pursuant to Section 337(f)(1)(B)(ii) of the Act, since the sole or principal purpose of the communications of CII entities are not to protect the safety of life, health or property, granting such access to otherwise ineligible CII entities through a *bona fide* eligible entity merely bypasses the separate requirement contained in Section 337(f)(1)(A) of the Act. Permitting the Public Safety Broadband Licensee to provide public safety broadband spectrum access to non-public safety entities also would exceed the carefully prescribed scope of its representation. Specifically, the eligibility criteria for the Public Safety Broadband Licensee requires, among other things, that such licensee be ''as broadly representative of the public safety radio user community as possible, including the various levels (*e.g.*, state, local, county) and types (*e.g.*, police, fire, rescue) of public safety entities,'' and be certified by at least ten geographically diverse state and local governmental entities whose ''primary mission is the provision of public safety services.'' [604]

325. The Commission also believes that permitting CII entities to access the 700 MHz public safety spectrum through the Public Safety Broadband Licensee—and thereby access this spectrum on a priority basis—would not be in the public interest. As the Commission observed in the *Second FNPRM*, given the limited amount of spectrum available to the public safety community, and particularly with respect to spectrum allocated for interoperability purposes, there is no margin for awarding priority access to entities that do not have as their sole or principal purpose the protection of the safety of life, health, or property.[605] Permitting CII entities to access the 700 MHz public safety broadband spectrum would significantly dilute the band's available capacity, because the size of the CII community is relatively much larger than the size of the public safety community itself. The Commission thus believes the public interest would be best served by maximizing broadband spectrum capacity for *bona fide* public safety entities, and maximizing the growth potential for new broadband applications geared towards the needs of the public safety community.[606] In any event, the Commission observes that CII entities may access the shared broadband network on a commercial basis as customers of the D Block licensee(s).

326. To implement the Commission's tentative conclusions on the eligibility issues, the Commission is proposing revisions to Section 90.523 of the Commission's rules (included in this document). First, the Commission proposes to revise the narrowband eligibility criteria to clarify that authorizations to deploy and operate systems in the 769–775 MHz and 799–805 MHz (narrowband) frequency bands are limited to systems the sole or principal use of which is to protect the safety of life, health, or property, and which are not used to provide any service that is made commercially available by the license holder.[607] Second, the Commission proposes to add a new provision setting forth the eligibility criteria for entities seeking to access the public safety broadband network through the Public Safety Broadband Licensee, which criteria incorporates the narrowband eligibility criteria and requires that the sole or principal purpose of such entities must be to protect the safety of life, health, or property.[608] Third, the Commission proposes revisions to the Public Safety Broadband Licensee eligibility criteria to ensure that the services provided through the Public Safety Broadband Licensee conform to all the elements of the statutory definition of ''public safety services.'' [609]

327. *Federal Usage of the Public Safety Broadband Network.* With respect to whether the Commission should modify Section 2.103 of the Commission's rules to limit Federal public safety agency use of the public safety broadband spectrum to situations where such use is necessary for coordination of Federal and non-Federal activities,[610] most parties opposed such a specific limitation. The Association of Public-Safety Communications Officials—International, Inc. (APCO), for example, asserts that it ''supports a provision that would allow Federal public safety use of the broadband network with the concurrence of the PSBL and local public users in the areas in which the Federal government desires to operate on the network.'' [611] APCO further contends that ''[i]n general, Federal public safety use should be encouraged as a means of improving interoperability in emergency response activities, but not at the expense of providing sufficient

[602] 47 U.S.C. 337(f)(1)(A).

[603] *See* American Hospital Association Comments at 3; Association of Emergency Medical Technicians Comments at 4; Mayo Clinic Comments at 4.

[604] 47 CFR 90.523(e). The scope of the Public Safety Broadband Licensee's representation also is limited by the requirements pertaining to its Articles of Incorporation, including that they incorporate among its purposes that the Public Safety Broadband Licensee ''is to represent the interests of all public safety entities to ensure that their broadband spectrum needs are met in a balanced, fair, and efficient manner, in the interests of best promoting the protection of life and property of the American public.'' *Second Report and Order* at para. 375.

[605] *Second FNPRM*, 23 FCC Rcd at 8061–62 para. 32.

[606] For these same statutory-based and public interest reasons, the Commission do not believe such concerns would be alleviated by permitting CII entities access to the 700 MHz public safety broadband spectrum only on a limited, case-by-case, emergency basis, as administered locally or through the Public Safety Broadband Licensee. *See, e.g.*, The National Association of Telecommunications Officers and Advisors (NATOA), the National Association of Counties (NACo), the National League of Cities (NLC), and the U.S. Conference of Mayors (USCM) Joint Comments at 13.

[607] *See* proposed Section 90.523(a)(1), Appendix A.

[608] *See* proposed Section 90.523(b), Appendix A.

[609] *See* proposed Section 90.523(c)(5), Appendix A.

[610] *Second FNPRM*, 23 FCC Rcd at 8092 at para. 126.

[611] Association of Public-Safety Communications Officials—International, Inc. Comments at 9.

spectrum capacity for state and local governments.''[612]

328. The Public Safety Spectrum Trust Corporation argues that ''the FCC should reaffirm the decision adopted in the Second R&O, wherein the PSST was given exclusive authority to approve Federal usage of the PSBL spectrum, a determination that will be made on a case-by-case basis consistent with the PSST's responsibility to promote interoperable public safety communications.''[613] The PSST further observes that ''Federal users who do not require priority service on the SWBN are free to accept normal commercial service as regular D Block subscribers.''[614]

329. Rivada Networks argues, however, that ''the Commission should streamline Section 2.103 to allow the most efficient and effective access of the public safety 700 MHz spectrum for Federal agencies that may be called upon to respond in the event of an emergency and coordinate with non-Federal State and local agencies.''[615] According to Rivada, ''[s]o long as there is 'mutual agreement between the Federal and non-Federal entities' and that agreement includes coordination procedures to protect against interference, Federal use of this spectrum should be presumptively allowed.''[616]

330. *Discussion*. The Commission believes that it should reaffirm the decision adopted in the *Second Report and Order* to grant the PSBL ''exercise of sole discretion, pursuant to Section 2.103 of the Commission's rules, whether to permit Federal public safety agency use of the public safety broadband spectrum, with any such use subject to the terms and conditions of the NSA.''[617] The Commission's decision in this regard was based upon the Commission's earlier determination that Section 337 of the Act does not bar Federal Government public safety entities from using the 700 MHz band under certain conditions.[618] Specifically, the Commission determined that, while Section 337 of the Act does not expressly indicate that Federal government entities should be eligible, such ''omission simply reflects the fact that the Commission does not license Federal stations.''[619] The Commission further observed that Federal entities, although ineligible for Commission licensing in the 700 MHz band, already were eligible to receive authorization to use the 700 MHz public safety spectrum in accordance with the requirements set forth in Section 2.103,[620] which the Commission amended to clarify the permitted Federal use of this band.[621] Key to the Commission's determination were its observations, based on the record then before it, that Federal entities provide noncommercial services the sole or principal purpose of which is to protect the safety of life, health, or property, and that allowing Federal entities to access the 700 MHz band is essential to promoting interoperability.[622]

331. The Commission sees no reason to disturb the Commission's previous treatment of Federal use of the 700 MHz public safety spectrum. The Commission agrees with APCO that ''federal public safety use should be encouraged as a means of improving interoperability in emergency response activities,''[623] and that narrowing the Commission's existing rules to permit Federal use of the 700 MHz band only for Federal/non-Federal coordination activities would achieve an opposite result. The Commission observes that contrary to PSST's characterization, such authority need not necessarily be exercised only on a case-by-case basis. To this extent, the Commission agrees with Rivada that the Public Safety Broadband Licensee may establish more broad-reaching agreements with Federal public safety entities and thus avoid the need for case-by-case determinations in appropriate situations.[624] Accordingly, the Commission tentatively concludes that the Commission will reaffirm its current rules under which the Public Safety Broadband Licensee has exercise of sole discretion, pursuant to Section 2.103 of the Commission's rules, whether to permit Federal public safety agency use of the public safety broadband spectrum, with any such use subject to the terms and conditions of the NSA.

332. *Mandatory Usage of the Public Safety Broadband Network*. In the *Second FNPRM* the Commission asked whether eligible public safety users should be required to subscribe to the shared broadband network for service, at reasonable rates, or be subject to some alternative obligation or condition promoting public safety network usage in order to provide greater certainty to the D Block licensee.[625] Among other things, the Commission asked whether it should require the purchase of a minimum number of minutes, and how such obligation might be imposed; whether any such obligation should be conditioned on the availability of government funding for access; and whether the Commission should require public safety users to pay for access with such money.[626]

333. The parties addressing these issues opposed any form of mandatory usage requirements. NPSTC, for example, asserted that, ''[s]uch a mandate would be a historic departure from the Commission's role of leaving such choice to the consumer, public or private.''[627] The International Association of Fire Fighters asserted that ''all public safety agencies must be given the flexibility to choose whether or not to participate based on their own unique public safety needs and obligations.''[628] The PSST opposed imposition of a mandatory use or minimum public safety usage requirement on grounds that such

[612] Association of Public-Safety Communications Officials—International, Inc. Comments at 9. *See also* National Public Safety Telecommunications Council Comments at 18 (''[t]he 700 MHz public safety broadband network should reflect the much envisioned objective of interoperability across all levels of government during an emergency.''); National Regional Planning Council Comments at 6 (''All governmental services, including federal and military, should be eligible.'').

[613] Public Safety Spectrum Trust Corporation Comments at 18–19. *See also* National Public Safety Telecommunications Council Comments at 18; Ericsson, Inc. Comments at 31.

[614] Public Safety Spectrum Trust Corporation Comments at 19.

[615] Rivada Networks Comments at 6.

[616] Rivada Networks Comments at 6.

[617] *See Second Report and Order*, 22 FCC Rcd at 15427 para. 383.

[618] *See Second Report and Order*, 22 FCC Rcd at 15427 para. 383 n.822 (*citing* Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, WT Docket No. 96–86, First Report & Order and Third Notice of Proposed Rulemaking, 14 FCC Rcd 152, 185 para. 66 (1998); 47 CFR 2.103(b)).

[619] Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, WT Docket No. 96–86, First Report & Order and Third Notice of Proposed Rulemaking, 14 FCC Rcd 152, 185 para. 66 (1998).

[620] *See* Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, WT Docket No. 96–86, First Report & Order and Third Notice of Proposed Rulemaking, 14 FCC Rcd 152, 185–86 paras. 67–68 (1998).

[621] *See* 47 CFR 2.103(b).

[622] *See* Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, WT Docket No. 96–86, First Report & Order and Third Notice of Proposed Rulemaking, 14 FCC Rcd 152, 185 para. 65 (1998).

[623] Association of Public-Safety Communications Officials-International, Inc. Comments at 9.

[624] *See* Rivada Networks Comments at 6.

[625] *Second FNPRM*, 23 FCC Rcd at 8063 para. 37.

[626] *Second FNPRM*, 23 FCC Rcd at 8063 para. 37.

[627] NPSTC Comments at 15.

[628] IAFF Comments at 5. *See also* NRPC Comments at 4; RPC 33 Comments at 4; Lencioni Comments at 1; TeleCommUnity Comments at 11; Virginia Comments at 7; Verizon Wireless Comments at 10; RPC 20 Reply Comments at 15–16.

concept ''is inconsistent with the PSST's understanding of the FCC's original Public/Private Partnership arrangement and with the PSST's belief that network adoption must be entirely voluntary.'' [629]

334. The City of Philadelphia added that, ''[w]here local governments are required to pay user fees over which they have no control, they must have the option of declining participation in the network where they determine the fees are unaffordable or local budget appropriations do not cover them.'' [630] Moreover, the City of Philadelphia observed that, ''[m]andating participation in a national network is not in the public interest because it requires local governments to cede control over service and operations and to accept terms that may not meet the specific communications needs of their public safety agencies.'' [631] The PSST commented that, ''[m]andating public safety use of the network, an option that the PSST does not support, could have the effect of disrupting existing business relationships between commercial operators and public safety organizations.'' [632]

335. The National Association of Telecommunications Officers and Advisors (NATOA), the National Association of Counties (NACo), the National League of Cities (NLC), and the U.S. Conference of Mayors (NATOA *et al.*) argued that ''there should be no mandatory requirement that public safety entities use the proposed network, but there must be a requirement that provides for interconnection of existing networks with the new network.'' [633]

336. Concerning the availability of government funding for access, the NRPC, for example, argued that ''[i]f a local public safety entity elects not to subscribe to the new network, the Commission would request the Commission's consideration to not develop regulatory rules that impose any obligations on the agency based on the availability of any government grant monies or any monies, regardless of origin.'' [634] Finally, APCO and NPSTC, also questioned the Commission's legal authority to impose such a mandate.[635]

337. *Discussion.* The Commission tentatively concludes not to establish any mandate requiring eligible public safety users to subscribe to the shared broadband network for service, or subject such entities to any other alternative obligations or conditions promoting public safety network usage. Specifically, the Commission is concerned that establishing usage mandates would potentially interfere with local public safety needs and obligations unique to their communities, as well as with existing network investments or business relationships with other vendors and service providers. In addition, any mandatory subscription obligation would be inconsistent with the Commission's continued expectation that voluntary participation will be driven by the shared network build undertaken by the D Block licensee(s), resulting state-of-the-art broadband applications, and economies of scale made possible under the public/private partnership approach.[636]

2. Provisions Regarding the Public Safety Broadband Licensee

a. Non-Profit Status

338. *Background.* Among other criteria for eligibility to hold the Public Safety Broadband License that the Commission established in the *Second Report and Order*, the Commission provided that no commercial interest may be held in the Public Safety Broadband Licensee, that no commercial interest may participate in the management of the licensee, and that the licensee must be a non-profit organization.[637] The Commission also indicated, however, that, as part of its administration of public safety access to the shared wireless broadband network, the Public Safety Broadband Licensee might assess ''usage fees to recoup its expenses and related frequency coordination duties.'' [638]

339. In the *Second FNPRM*, the Commission sought to further examine the Public Safety Broadband Licensee's non-profit status, and issues related to alternative funding mechanisms, including excess revenue derived from any access fees that the Public Safety Broadband Licensee might charge. With respect to the requirement that the Public Safety Broadband Licensee be organized as a non-profit organization, in the *Second FNPRM*, the Commission sought comment as to whether the Commission should specify that the Public Safety Broadband Licensee and all of its members (in whatever form they may hold their legal or beneficial interests in the Public Safety Broadband Licensee) must be non-profit entities.[639] While the Commission acknowledged that the Public Safety Broadband Licensee may need to contract with attorneys, engineers, accountants, and other similar advisors or service providers to fulfill its responsibilities to represent the interests of the public safety community, the Commission asked whether the Commission should restrict the Public Safety Broadband Licensee's business relationships pre- and post-auction with commercial entities, and if so, what relationships should and should not be permitted.[640]

340. The Commission also sought comment as to whether the Commission should clarify that the Public Safety Broadband Licensee may not obtain debt or equity financing from any source, unless such source is also a non-profit entity.[641] The Commission asked whether such a restriction would be warranted to ensure that the Public Safety Broadband Licensee is not unduly influenced by for-profit motives or outside commercial influences in carrying out its official functions.[642] The Commission also sought comment on ways to allow necessary financing while still ensuring the independence of the Public Safety Broadband Licensee, such as whether to allow working capital financing from commercial banks and whether to restrict the assets of the Public Safety Broadband Licensee that can be pledged as security for such loans, and/or whether there are other types of loans or alternative funding sources that the Commission should allow the Public Safety Broadband Licensee to employ.[643]

341. As a separate line of inquiry, the Commission sought comment in the *Second FNPRM* on the best way to fund the Public Safety Broadband Licensee's operations. The Commission asked, for example, whether the D Block licensee should be required to pay the Public Safety Broadband Licensee's administrative costs and, if so, whether

[629] PSST Comments at 17–18.

[630] Philadelphia Comments at 6. *See also* NPSTC Comments at 15; Lencioni Comments at 1.

[631] Philadelphia Comments at 6.

[632] PSST Comments at 18. *See also* TE M/A–COM Comments at 9.

[633] NATOA *et al.* Comments at 18.

[634] NRPC Comments at 4. *See also* APCO Comments at 13 (arguing that the Commission lacks authority to require ''use of the public safety broadband network [as] a condition of government funding.'').

[635] *See* APCO Comments at 13; NPSTC Comments at 15.

[636] *See, e.g.*, Second Report and Order, 22 FCC Rcd at 15431 para. 396.

[637] *See Second Report and Order*, 22 FCC Rcd at 15421 para. 421.

[638] *Id.* at 15426 para. 383.

[639] *Second FNPRM*, 23 FCC Rcd at 8064 para. 40.

[640] *Second FNPRM*, 23 FCC Rcd at 8064 para. 40.

[641] *Second FNPRM*, 23 FCC Rcd at 8064–65 para. 41.

[642] *Second FNPRM*, 23 FCC Rcd at 8064–65 para. 41.

[643] *Second FNPRM*, 23 FCC Rcd at 8064–65 para. 41.

such obligation should be capped.[644] Assuming government-allocated funding were available, the Commission asked whether such funding mechanisms would be the best solution for funding the Public Safety Broadband Licensee.[645] The Commission further asked whether the Commission has legal authority to support the Public Safety Broadband Licensee's operational expenses through the Universal Service Fund [646] or Telecommunications Development Fund,[647] and whether such approaches would be appropriate.[648]

342. The Commission also sought comment on whether any excess revenue generated by the fees or other sources of financing obtained by the Public Safety Broadband Licensee from non-profit entities should be permitted and, if so, how they should be used.[649] The Commission asked, for example, whether the Public Safety Broadband Licensee should be permitted to hold a certain amount of excess income as a reserve against possible future budget shortfalls or whether such excess income should instead be used for the direct benefit of the public safety users of the network, such as for the purchase of handheld devices.[650] Finally, the Commission sought comment on whether the Public Safety Broadband Licensee may legitimately incur certain reasonable and customary expenses incurred by a business, consistent with the constitution of the Public Safety Broadband Licensee and the nature of its obligations as established by the Commission.[651]

343. *Comments*. The Commission received comments on most of the issues raised in the *Second FNPRM*, as broken out below.

(i) Clarifying the Public Safety Broadband Licensee's Non-Profit Status

344. Only a few commenters addressed the question of clarifying the Public Safety Broadband Licensee's non-profit status. NATOA endorsed requirements that ''no commercial interest may be held in the Public Safety Broadband Licensee, that no commercial interest may participate in the management of the licensee, and that the licensee must be a non-profit organization.'' [652] AT&T and others asserted that the Commission should ensure ''that the PSBL must be a nonprofit entity that will use the network solely for public safety purposes.'' [653] TeleCommUnity argued that ''in addition to the public policy argument that favors the requirement that the [PSBL] be a non-profit organization, there could be an argument that Section 337 of the Act requires that the Licensee be so.'' [654]

345. *Discussion*. The Commission agrees with commenters who argue that the Public Safety Broadband Licensee should remain a non-profit entity and see no reason at this time to alter the non-profit status of the Public Safety Broadband Licensee. As discussed in the following paragraphs and elsewhere in this Third FNPRM, the Commission is proposing significant steps to insulate the Public Safety Broadband Licensee from undue commercial influence, and additional reporting and auditing requirements to provide greater oversight of the Public Safety Broadband Licensee's activities. The Commission believes these changes should further clarify the non-profit requirement of the Public Safety Broadband Licensee.

(ii) Restrictions on PSBL Business Relationships

346. With respect to the question of restricting the Public Safety Broadband Licensee's business relationships pre- and post-auction with commercial entities generally, the record reflects mixed views. The PSST asserted that ''the current restrictions regarding its agent/advisor relationships are more than adequate to prevent improper commercial influence, and the FCC should not place additional restrictions on the PSST's business relationships and its agent/advisor relationships.'' [655] Instead, the PSST argued, ''the Commission should provide greater clarity regarding its restriction on 'commercial interests' participating in management of the license.'' [656] The PSST observed that the current rules governing the PSBL ''allow for arrangements with third parties to assist with the management or operation of the public safety-side of the network,'' which arrangements the PSST asserted ''are invaluable for a variety of reasons, including access to expertise and funding, in assisting the PSST to do its job effectively.'' [657]

347. The PSST further indicated that while ''there have been abuses in the past involving impermissible relationships between licensees and third parties that would cause the FCC to adopt [ ] prophylactic measures,'' it is also important ''that the FCC not so restrict the PSBL in its ability to contract for needed services that it is prevented from fulfilling the very functions that the FCC has determined need to be undertaken on behalf of public safety.'' [658] In this regard, the PSST added that it ''has a strong preference for outsourcing services to others where practical and appropriate, thereby avoiding the need for a large internal staff with associated employer obligations.'' [659] The PSST further argued that ''provision of management services or other types of support that are consistent with [the] *Intermountain Microwave* or *Motorola* [standards for *de jure* and *de facto* control] and would not involve prohibited economic interests should be permitted under 'incentive-compatible' standards.'' [660] In addition, the PSST argued that ''any new 'incentive-compatible' rules must not unduly restrict the PSST's ability to obtain funding, so long as there is no commercial interest participating in management of the licensee.'' [661]

348. Finally, the PSST states that its ''engagement of Cyren Call is consistent with those FCC requirements.'' [662] The PSST explained that ''[b]ecause it had no governmental or other funding or assets to serve as collateral for a commercial loan, [it] obtained a deferral from Cyren Call of amounts due, and even obtained an advance loan from Cyren Call that reflects arm's-length, normal commercial terms.'' [663] The PSST asserts, however, that ''Cyren Call has no management relationship with or management role within the PSST, has no legal or beneficial interest in the PSST, and does not participate in the PSST's management.'' [664] The PSST further asserts that ''[t]here are no conditions, covenants or other features of Cyren Call's service agreement with or loan to the PSST that would allow

[644] *Second FNPRM*, 23 FCC Rcd at 8065 para. 42.

[645] *Second FNPRM*, 23 FCC Rcd at 8065 at para. 42.

[646] *See, e.g.*, 47 U.S.C. 254(c)(1), (h).

[647] *See, e.g.*, 47 U.S.C. 614.

[648] *Second FNPRM*, 23 FCC Rcd at 8065 para. 43.

[649] *Second FNPRM*, 23 FCC Rcd at 8065–66 para. 44.

[650] *Second FNPRM*, 23 FCC Rcd at 8065–66 para. 44.

[651] *Second FNPRM*, 23 FCC Rcd at 8066 para. 45.

[652] NATOA Comments at 14–15 (internal footnote omitted).

[653] AT&T Comments at 19, 21. *See also* Eads Comments at 1; Lencioni Comments at 2; Philadelphia Comments at 5.

[654] TeleCommUnity Comments at 11.

[655] PSST Comments at 49.

[656] PSST Comments at 49.

[657] PSST Comments at 49.

[658] PSST Comments at 49.

[659] PSST Comments at 50.

[660] PSST Comments at 50 (citing *Intermountain Microwave*, 12 FCC 2d 559 (1963); Applications of Motorola, Inc. for 800 MHz Specialized Mobile Radio Trunked Systems, File Nos. 507505 *et al.*, *Order* (issued July 30, 1985) (Private Radio Bureau)).

[661] PSST Comments at 50.

[662] PSST Comments at 50–51.

[663] PSST Comments at 51.

[664] PSST Comments at 51.

Cyren Call to influence the PSST's policy or management determinations.'' [665] Cyren Call stated that its arrangements with the PSST did not provide it ''with any measure of control or undue influence over the PSST's activities or its decisionmaking process.'' [666]

349. NPSTC asserted that the ''experience and expertise in deploying and operating wireless communications is a narrow field'' and, thus, ''the PSBL should have the ability to select its advisors to discharge its duties effectively.'' [667] APCO, however, noted that ''the Commission should require that the PSBL adopt strict conflict of interest requirements that include prohibiting its advisors from engaging in business activities resulting from the advice provided to the PSBL [and] from establishing business relationships with equipment vendors, service providers, and others with a financial interest in the decisions of the PSBL.'' [668] Further, as explained more fully below, some commenters expressed concerns regarding the propriety of permitting the PSBL to be funded by any of its for-profit advisors.

350. *Discussion.* The Commission agrees with APCO that the Commission should subject the Public Safety Broadband Licensee and its advisors, agents, and managers to strict conflict of interest requirements. The Commission believes safeguards should be implemented to ensure that no entity is able to influence the Public Safety Broadband Licensee's pre-auction activities in a manner that might benefit that entity's, or a related entity's, plans to participate in the upcoming D Block auction, or to gain any advantage as compared to other bidders by virtue of information obtained from the Public Safety Broadband Licensee during the course of its relationship with the Public Safety Broadband Licensee. Thus, the Commission tentatively concludes that the Commission should adopt conflict of interest requirements making entities that are serving as advisors, agents, or managers (or their related entities, including affiliates and those controlled by any officer or director of such an entity) of the PSBL ineligible to become a D Block licensee unless such an applicant completely severs its business relationship with the Public Safety Broadband Licensee no later than 30 days following the release date of an order adopting final rules in this proceeding.[669] For purposes of this eligibility rule, the Commission proposes to define the terms officer, director, and affiliate in the same manner as those terms are currently defined in Section 1.2110(c) of the Commission's rules, which govern competitive bidding, relating to designated entity eligibility because the Commission has found those definitions effective when assessing relationships among parties related to an applicant.[670] The Commission seeks comment on this tentative conclusion and proposed rule.

351. The Commission also tentatively concludes that the Commission should adopt conflict of interest requirements requiring entities that are serving as advisors, agents, or managers (or their related entities, including affiliates and those controlled by any officer or director of such an entity) of the PSBL from establishing business relationships or otherwise being affiliated with, or holding a controlling interest in, equipment vendors, service providers, or other entities that have a direct financial interest in the decisions of the PSBL.[671] These requirements would apply to both pre-auction and post-auction activities. The Commission seeks comment on this tentative conclusion and proposed rule.

352. The Commission does not believe that the regulations the Commission proposes today will interfere with the Public Safety Broadband Licensee's ability to discharge its duties effectively. The Commission also considers it necessary to implement regulations in order to prevent impropriety and/or the appearance of impropriety in the Public Safety Broadband Licensee's discharge of its duties. The Commission agree with the PSST on the necessity of avoiding regulations that overly restrict the Public Safety Broadband Licensee's ability to engage in necessary transactions with third parties. The Commission believes that the requirements the Commission propose here strike the appropriate balance between providing the Public Safety Broadband Licensee with the flexibility it requires to utilize expert advisors, agents, and managers, and to make necessary contracts with third parties, while ensuring that the Public Safety Broadband Licensee's decisions are insulated from potential undue influences.

(iii) Funding of the PSBL Through the D Block Licensee

353. With respect to funding the PSBL through the D Block licensee, there was support for such action, in various forms, including via an upfront payment as well as through recurring payments, such as in the form of a spectrum lease fee. The PSST stated that, as a non-profit, tax-exempt organization subject to IRS rules, the PSST ''will need to charge usage fees to public safety users, and it will need to obtain a lease payment from the D Block licensee.'' [672] The PSST added that ''[b]ecause the bulk of the spectrum likely will be used by the D Block licensee to provide services from which it expects to realize a profit, the PSST believes it logically should obtain most of its funding from the lease payment.'' [673] The PSST, however, acknowledged that ''there must be an appropriate balance of public safety fees paid for SWBN usage and a D Block spectrum lease payment,'' which the PSST argued should be evaluated, along with related issues, and addressed in the NSA.[674]

354. APCO asserted that, lacking conventional forms of security, it will be difficult for the PSBL to obtain debt financing and, therefore, an FCC rule provision ''that a specific dollar amount must be made available by the D Block licensee to the PSBL to pay back loans obtained from financial institutions to provide operational funds'' would be appropriate.[675] APCO further suggested ''requiring the D Block licensee to establish a trust fund with a specified dollar amount that the PSBL would be allowed to draw from and pay its operating expenses * * * provided there is a clearly established and supported operating budget.'' [676] APCO stated that the Commission should continue to require that the D-Block winner pay a spectrum lease fee to the Public Safety Broadband Licensee as part of the NSA, but asked the Commission to provide ''some further definition * * * to provide auction participants with greater certainty,'' and also stated that a ''fee cap may also be appropriate.'' [677]

[665] PSST Comments at 51.

[666] Cyren Call Reply Comments at 6.

[667] NPSTC Comments at 21. *See also* Hanna Reply Comments at 2; NASEMSO Reply Comments at 2.

[668] APCO Comments at 17.

[669] In this regard, the Commission notes that Cyren Call currently has an outstanding loan extended to the PSST. The Commission seeks comment on whether Cyren Call should be allowed to remain a creditor of the PSST if it wishes to be eligible to become a D Block licensee.

[670] *See* 47 CFR 1.2110(c).

[671] For purposes of defining ''affiliated'' and ''controlling interest,'' the Commission propose to use the definitions contained at 47 CFR 1.2110(c).

[672] PSST Comments at 23–24.

[673] PSST Comments at 23–24.

[674] PSST Comments at 24.

[675] APCO Comments at 18.

[676] APCO Comments at 18.

[677] APCO Comments at 18. However, APCO warned against the D-Block winner directly paying the PSBL's expenses ''as that would create potential conflicts of interest.'' *Id.*

355. The NRPC stated that the ''D Block licensee should be required to pay all costs identified as necessary with regard to the [PSBL's] administrative costs.'' [678] In the context of its revised plan for implementing a shared broadband network, Televate proposed that the ''D Block winner provides billing services to the public safety community and collects a service fee, per line, to fund PSST baseline operations.'' [679]

356. Both the PSST and APCO asserted that the PSBL should be allowed to obtain a lease payment from the D Block licensee to cover the PSBL's operational funding.[680] NENA stated that ''in the absence of government funding for the public safety broadband licensee, the licensee must be permitted to generate revenues to ensure its viability.'' [681] AT&T asserted that the ''Commission must promulgate guidelines that address the spectrum usage fees the PSBL may charge commercial partners for access to 700 MHz public safety broadband spectrum,'' and these guidelines ''should clarify that any lease agreements be negotiated using commercial practices for cost recovery for the PSBL.'' [682] AT&T urged that these guidelines ''address how charges for network usage and spectrum access will be structured.'' [683]

357. With respect to excess revenues, the PSST stated that ''there would be nothing improper in the PSST undertaking an activity that might generate revenue that exceeded its expenses, provide the activity was in furtherance of public safety interests.'' [684] APCO suggested that ''all funds generated through spectrum lease fees in excess of those deemed appropriate to cover the operating expenses of the PSBL be held in trust with a not-for-profit foundation [from which] public safety users have the ability to apply for grant funding * * * to be used to cover the cost of equipment, devices, and any operating fees associated with the use of the nationwide broadband network.'' [685] APCO also asked the Commission not to ''impose any arbitrary restrictions on [any] excess revenues * * * of the PSBL.'' [686] APCO did, however, indicate support for Commission oversight of the PSBL's use of any excess revenues.[687] Region 33 states that any excess revenues should ''be used to offset operating expenses with the remainder going toward infrastructure improvements.'' [688] Region 33 also adds ''limiting the amount of time excess funds can be retained'' would allow use of excess income as a reserve against possible future budget shortfalls, but also provide funding for ''improvements to infrastructure or general rate reductions for users.'' [689]

358. *Discussion.* The Commission agrees with commenters that it is reasonable for the D Block licensee(s) to cover the Public Safety Broadband Licensee's administrative and operating expenses. The Public Safety Broadband Licensee's non-profit status as discussed above and the Commission's related concerns that no entangling financial relationships compromise its core mission of representing the public safety community point to establishing a direct funding mechanism between the D Block licensee(s) and the Public Safety Broadband Licensee. Further, the Commission finds merit in ensuring that the administrative and operating expenses of the Public Safety Broadband Licensee are finely tuned to its core mission and fully transparent to key stakeholders. Thus, the Commission tentatively concludes that the Public Safety Broadband Licensee shall establish an annual budget and submit this budget to the Chief, WTB and Chief, PSHSB, on delegated authority, for approval. The proposed annual budget to be submitted by the Public Safety Broadband Licensee would enable the Commission to ensure that the Public Safety Broadband Licensee is acting in a fiscally responsible manner and not engaging in activities that exceed the scope of its prescribed roles and responsibilities. The Public Safety Broadband Licensee already is required to submit a full financial accounting on a quarterly basis,[690] which helps serve the same purpose. As an additional measure, the PSBL also would need to have an annual audit conducted by an independent auditor. In addition, the Commission is proposing to provide that the Commission reserves the right, as delegated to the Chief, PSHSB, to request an audit of the Public Safety Broadband Licensee's expenses at any time.

359. With respect to the mechanism of funding of the Public Safety Broadband Licensee, the Commission tentatively concludes that the nationwide D Block licensee or, if the D Block is licensed on a regional basis, each regional D Block licensee, will make an annual payment to the Public Safety Broadband Licensee of, in the aggregate, the sum total of $5 million per year. These payments would be in consideration for the D Block licensee(s)' leased access on a secondary basis to the public safety broadband spectrum. In the event that the D Block is licensed on a regional basis, the Commission will specify after the close of the auction the annual payments required for each license won at auction, such that the total $5 million in annual payments to the Public Safety Broadband Licensee is apportioned on a per region basis, based upon total pops per region. Because these figures are tied to the regional D Block licenses actually won at auction, the Commission may adjust them to account for any regional D Block licenses that may go unsold in the next D Block auction but which are successfully reauctioned on a subsequent date. The annual payment funds will be placed into an escrow account managed by an unaffiliated third party, such as a major commercial financial institution, for the benefit of the Public Safety Broadband Licensee. The Commission will require the Public Safety Broadband Licensee to seek approval of its selected escrow account manager from the Chief, PSHSB. The Public Safety Broadband Licensee would draw funds on this account to cover its annual operating and administrative expenses in a manner consistent with its submitted annual budget for that fiscal year.[691] The entirety of the Public Safety Broadband Licensee's annual operating budget shall be based on these annual payments. The Commission seeks comment on these tentative conclusions and proposals, including when the D Block licensee(s) should make their initial payment to the Public Safety Broadband Licensee. Specifically, comment is requested on whether the D Block licensee(s) should make funding available prior to the commencement of the NSA negotiation process. As a related matter, the Commission also seeks comment on when it should first require the Public Safety Broadband Licensee to develop its first annual

[678] NRPC Comments at 5.

[679] Televate Comments at 13.

[680] *See* PSST Comments at 23–24; APCO Comments at 18.

[681] NENA Comments at 4–5.

[682] AT&T Comments at 19.

[683] AT&T Comments at 19. AT&T argued that the lack of this information ''was a factor cited as contributing to the failed D Block auction.'' *Id.*

[684] PSST Comments at 22.

[685] APCO Comments at 18–19.

[686] APCO Comments at 19.

[687] APCO Comments at 19.

[688] Region 33 Comments at 6.

[689] Region 33 Comments at 6.

[690] *See* 47 CFR 90.528(g).

[691] In the event that the PSST continues to serve as the PSBL, it may, as part of its first submitted annual budget, account for its administrative and operational expenses to date.

budget, and when the Commission should require the independent audit.

360. To the extent that the Public Safety Broadband Licensee's actual operating expenses for a given fiscal year turn out to be less than its proposed budget, such that there are excess funds left over at the end of that fiscal year from the annual payment(s) made by the D Block licensee(s) at the beginning of that year, those excess funds would be applied towards the Public Safety Broadband Licensee's funding of administrative or operational expenses for the following fiscal year, or to fund secondary activities, such as the purchase of equipment for the benefit of individual public safety agencies. The Commission expects that the various reporting and auditing requirements will provide the Commission with sufficient ability to ensure that the Public Safety Broadband Licensee's expenses are reasonable and that it is operating within the scope of its prescribed role and responsibilities.[692]

361. Finally, in light of the funding mechanism the Commission proposes above, the Commission tentatively concludes that the Commission will not permit the Public Safety Broadband Licensee to charge a separate lease fee to the D Block licensee(s) for their use of the public safety broadband spectrum. As noted elsewhere, given the funding mechanism the Commission is tentatively proposing above, the Commission is also tentatively proposing not to permit the Public Safety Broadband Licensee to obtain loans or financing from any other sources.

(iv) Funding of the PSBL Through the Federal Government

362. Commenters generally questioned the legality of funding the Public Safety Broadband Licensee's operations through the Universal Service Fund (USF) and/or Telecommunications Development Fund (TDF). APCO, for example, asserted that from a ''public policy perspective, there is much to support using USF'' to support the PSBL, but noted ''potential legal issues'' in that the PSBL is not a common carrier.[693] NPSTC observed that the ''revenue base of [the USF and TDF] is already subject to varying constraints and demands, if not controversy,'' concluding that ''[t]he risks associated with these alternatives appears to outweigh any potential benefit.'' [694]

363. With respect to other sources of Federal funding for the PSBL, many commenters supported such action, noting Congresswoman Jane Harmon's proposed legislation [695] to achieve this result.[696] NATOA, for example, asserted that ''government funding of the PSBL is the best option to preserve the licensee's independence from commercial interests.'' [697]

364. Spectrum Acquisitions proposed a revised band plan leading to increased D Block spectrum which, when auctioned, could ''provide additional funds to be transferred to the PSST.'' [698] Hanna suggested using ''revenues generated from pending auctions, to provide a funding stream to all the PSST/PSBL to operate in an independent and transparent manner.'' [699] The IAFF suggested establishment of ''a grant program to fund the administrative and operational costs of the public safety licensee, thus eliminating the need for the public safety licensee to procure such funding from for-profit entities.'' [700]

365. *Discussion.* As an initial matter, the Commission does not believe that the USF or TDF funding programs are appropriate for funding the Public Safety Broadband Licensee's operations. In the case of USF, the Commission observes that the USF program ultimately is intended to fund actual services, whereas the context for exploring USF funding in this proceeding is to fund the day-to-day administrative operations of the Public Safety Broadband Licensee.[701] Moreover, USF funding is limited to ''eligible telecommunications carriers'' (ETC),[702] and as the PSST observes, to be designated as an ETC, the Public Safety Broadband Licensee ''would need to be a common carrier, which it is not and cannot become.'' [703]

366. With respect to the TDF, as currently constituted, this program appears inappropriate for funding the Public Safety Broadband Licensee's operations. Congress established the TDF in Section 707 of the Telecommunications Act of 1996 [704] as a mechanism to promote access to capital for small businesses in the telecommunications industry, stimulate the development of new technology, and support delivery of universal service.[705] The TDF, a non-profit corporation, essentially functions as a venture capital fund, making loans to ''eligible small business[es]'' based upon business plans and related considerations.[706] As such, the TDF takes equity positions in the companies that seek its assistance, and makes funding decisions largely based upon the business case of the potential borrower, both of which are inapposite to the non-profit status of the Public Safety Broadband Licensee and its operations. Moreover, since the TDF program is a statutory entity with no implementing FCC regulations, accommodating the funding of the Public Safety Broadband Licensee by the TDF would require legislation.

367. Regarding commenters' other suggested sources for Federal funding of the PSBL, while the Commission agrees that government funding of the PSBL may well be the best option to preserve the licensee's independence from commercial interests, the Commission notes that it has no control over Congressional disbursement of funds. Moreover, the use of auction revenues or Federal grants for the purpose of funding the PSBL would also require Congressional legislation.

(v) Restrictions on Financing

368. With regard to the issue of implementing restrictions on financing that would facilitate necessary funding while still ensuring the independence of the Public Safety Broadband Licensee, the comments again reflected mixed views.

369. The PSST stated that in its early years of operation it ''likely will need to

[692] As discussed elsewhere, the Commission propose certain limitations on the role and responsibilities of the Public Safety Broadband Licensee, which should lead to significantly decreased expenses than what may have originally been envisioned by the PSST.

[693] APCO Comments at 19. *See also* PSST Comments at 25. However, the PSST does recommend use of the USF and TDF to fund the D Block licensee's activities. *Id.*

[694] NPSTC Comments at 20–21.

[695] *See* Public Safety Broadband Authorization Act of 2008, H.R. 6055, 110th Cong. (2008).

[696] *See* AT&T Comments at 21; Philadelphia Comments at 5; NRPC Comments at 5; TeleCommUnity Comments at 12; RPC 33 Comments at 5; RPC 20 Reply Comments at 18.

[697] NATOA *et al.* Comments at 15.

[698] SAI Comments at 13.

[699] Hanna Reply Comments at 2–3.

[700] IAFF Comments at 3.

[701] *See, e.g.*, 47 U.S.C. 254(c)(1) (''In general.—Universal service is an evolving level of telecommunications services * * *'') (*emphasis added*); 47 U.S.C. 254(e) (''A carrier that receives [USF] support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.'').

[702] *See* 47 U.S.C. 254(e).

[703] PSST Comments at 25 (*citing* 47 U.S.C. 214(e)).

[704] Public Law No. 104–104, § 707, 110 Stat. 56, 47 U.S.C. 614.

[705] *See* 47 U.S.C. 614(a).

[706] *See* 47 U.S.C. 614(f). TDF funds may only be used for: ''The making of loans, investments, or other extensions of credits to eligible small businesses''; provision of financial advice to ''eligible small businesses''; conducting research; paying the TDF's operating expenses; and ''other services'' consistent with the TDF's purposes. *See* 47 U.S.C. 614(e).

borrow money'' and the Commission ''should continue to allow the PSBL to secure ordinary commercial loans at reasonable rates.'' [707] The Virginia Fire Chiefs stated that if ''neither Congress nor FCC can provide * * * funding, it should not deny the PSST the ability to fund itself using methods commonly in use by other non-profit entities.'' [708] AASHTO supported the ''Commission's concern [that] the holder of the PSBL is representative of all public safety groups,'' but urged the Commission to ''strongly consider if the imposition of any additional conditions, mandates, or restrictions placed on one not-for-profit licensee would apply equally to all other not-for-profit licensees.'' [709] AASHTO further argued that ''[i]mposition of FCC regulations above those requirements of the [IRS] only obfuscate the issue and do not add clarity or transparency.'' [710]

370. APCO argued that ''[e]quity funding from any sources should be prohibited, as that would undermine the independence and non-profit status of the PSBL.'' [711] APCO further asserted that ''the PSBL must have the ability to seek debt financing (*i.e.*, loans) to fund its operations, and those loans would almost certainly need to be from banks or other ''for profit'' institutions.'' [712] NATOA argued that the PSBL should not be allowed to ''obtain debt or equity financing from any source * * * unless such source is also a non-profit entity.'' [713] Peha asserted that prohibiting the PSBL from accepting funds from for-profit entities ''is a useful restriction, but not a sufficient restriction,'' because some entities might qualify as non-profit yet have missions that would make it ''problematic if they funded the PSBL.'' [714] Accordingly, Peha argued that the funding ''should come from a source whose unambiguous objective is either to serve the public interest, or to serve public safety.'' [715]

371. As indicated above, commenters also opposed allowing the PSBL to obtain funding from any of its agent/advisors. APCO, for example, contended that the ''agent/advisor's funding of the PSST and the resulting debt creates at least a perception that the agent/advisor could exert undue influence over the PSST.'' [716] APCO further contended that such funding scenario ''imposes a financial burden that could interfere with the PSST's mission.'' [717] Accordingly, APCO asserted that ''the Commission's rules should prohibit the PSBL from borrowing funds from entities that provide substantial services to the PSBL.'' [718]

372. Peha espoused a similar view, noting that by obtaining funding from its advisor, ''the PSST has probably lost the option of choosing a new advisor if it is ever unhappy with the current one * * *'' [719] Peha observed that where the PSBL's advisor also loans money to the PSBL, the advisor then ''has a great deal to lose if the PSBL is unable to reach agreement with a commercial provider, as the loan will never be repaid,'' but ''has nothing to lose if the PSBL reaches an agreement that fails to meet the needs of a single public safety organization.'' [720] Verizon Wireless argued that a single entity that both loans money and serves as an advisor to the PSBL ''raises issues concerning potential conflicts,'' and that, in such instances, the Commission ''should take steps to ensure that the no-commercial-profit principal is not violated.'' [721]

373. *Discussion.* As indicated above, the Commission is proposing that funding for the Public Safety Broadband Licensee's operational and administrative costs would come through the annual payment to the Public Safety Broadband Licensee of one percent of the amount of the D Block licensee's gross winning bid, but not to exceed the sum of $5 million per year. The Commission believes this funding mechanism will make it unnecessary for the Public Safety Broadband Licensee to seek third party loans to fund start-up and ongoing operations. Thus, the Commission proposes to clarify that the Public Safety Broadband Licensee may not obtain debt or equity financing from any source. As commenters point out, the independence of the Public Safety Broadband Licensee may be unduly influenced by for-profit motives or outside commercial influences in carrying out its official functions were it allowed to enter into financing agreements with third party, for profit entities. For similar reasons, the Commission proposes to prohibit the acquisition of any financing, whether debt or equity, from Public Safety Broadband Licensee agents, advisors or any entity that provides services to the Public Safety Broadband Licensee.[722] Further, the Commission remains concerned that any financial arrangement beyond those described below with respect to funding from the D Block licensee(s) would impose a financial burden that could compromise the functioning and mission of the Public Safety Broadband Licensee. Thus, the Commission proposes to prohibit the Public Safety Broadband Licensee from entering into any financial arrangements with third party, non-profit entities for the purpose of securing funding.

b. Fees for Services Provided to Public Safety Entities

374. *Background.* In the *Second Report and Order*, the Commission provided guidance concerning the service fees that the D Block licensee could charge public safety users for their access to and use of the public safety broadband network and, in times of emergency, to the D Block spectrum.[723] The Commission also discussed the importance of the D Block licensee's ability to offer commercial services using the public safety broadband spectrum leased from the Public Safety Broadband Licensee.[724]

375. The Commission required that all service fees—including service fees that the D Block licensee would charge public safety users for normal network service using the public safety broadband spectrum and for their priority access to the D Block spectrum—be specified in the Network Sharing Agreement.[725] The Commission encouraged the parties to negotiate a fee agreement that incorporates financial incentives for the D Block licensee based on the number of public safety entities and localities that subscribe to the service.[726] The Commission also observed that, for the negotiation of reasonable rates, typical commercial

[707] PSST Comments at 23 n. 48.

[708] Virginia Fire Chiefs Comments at 2. *See also* RPC 33 Comments at 7; NPSTC Comments at 21; Northrop Grumman Comments at 12; NAEMT Comments at 3–4; AASHTO Comments at 14.

[709] AASHTO Comments at 7.

[710] AASHTO Comments at 8.

[711] APCO Comments at 17.

[712] APCO Comments at 17.

[713] NATOA *et al.* Comments at 15. *See also* Philadelphia Comments at 5.

[714] Peha Comments at 10.

[715] Peha Comments at 10.

[716] APCO Comments at 17.

[717] APCO Comments at 17.

[718] APCO Comments at 17. *See also* APCO Comments at 17–18 (''[An] appropriate provision would be to prohibit debt financing from any entity that provides services to or otherwise has business relationships with the PSBL.'').

[719] Peha Comments at 9–10.

[720] Peha Comments at 10.

[721] Verizon Wireless Comments at 34. *See also* AT&T Comments at 19, 21; IAFF Comments at 3; RPC 20 Reply Comments at 17; Verizon Wireless Reply Comments at 23–26.

[722] The Commission includes any equipment manufacturer financing to support the acquisition of equipment for public safety users.

[723] *Second Report and Order*, 22 FCC Rcd at 15448–49 paras. 450–52.

[724] *Second Report and Order*, 22 FCC Rcd at 15437–39 paras. 414–19, 15441 para. 425.

[725] *Second Report and Order*, 22 FCC Rcd at 15448 para. 45.

[726] *Second Report and Order*, 22 FCC Rcd at 15448 para. 450.

rates for analogous services might be useful as a guide, but that the negotiated rates may in fact be lower than typical commercial rates for analogous services.[727] The Commission added that the Commission expectation was that the winning bidder of the D Block license and the Public Safety Broadband Licensee would negotiate a fee structure for priority access to the D Block in an emergency that will protect public safety users from incurring unforeseen (and unbudgeted) payment obligations in the event that a serious emergency necessitates preemption for a sustained period.[728]

376. In the *Second FNPRM*, the Commission invited comment on whether the Commission should reconsider any aspect of the rules regarding service fees to be paid by public safety users, including any applicable fees for normal network service and fees for priority access to the D Block in an emergency.[729] The Commission specifically sought comment on whether the Commission should clarify any aspect of these service fees that was left to negotiations.[730] The Commission also asked whether the Commission provided adequate guidance in the *Second Report and Order* to enable the parties to negotiate reasonable rates for all fees, or whether the Commission should adopt a more detailed fee structure or formula to facilitate negotiations on this issue.[731] The Commission asked, for example, whether the Commission should specify that the D Block licensee is entitled to charge rate-of-return or cost-plus rates, taking the incremental costs of public safety network specifications and other costs attributable uniquely to public safety users into account.[732] Alternatively, the Commission asked whether requiring public safety users to pay the same rates as commercial users would be sufficient.[733] The Commission further asked whether the Commission should mandate that public safety users be entitled to receive the lowest rate that the D Block licensee offers to its commercial users for analogous service.[734]

377. The Commission also sought comment on whether particular uses of the public safety broadband network by public safety users should be free and others fee-based, and upon what bases such distinction should be made.[735] In this regard, the Commission asked whether it is practical to use service- and context-based distinctions, such as between voice and advanced data services, mission-critical and non-mission-critical communications, emergency and non-emergency events, priority and non-priority access, or similar metrics.[736] Alternatively, the Commission asked whether it would be preferable to rely on technical distinctions, such as a specified number of minutes or bits, a percentage of network capacity, or similar metrics.[737] Finally, the Commission asked whether either approach would provide sufficient certainty to public safety users and/or the commercial D Block licensee.[738]

378. *Comments.* A number of commenters addressed whether the Commission should more clearly define the fees to be charged to public safety users. AT&T, for example, asserted that ''it is critically important that the Commission provide additional guidance in this area * * * to enable potential commercial participants to evaluate the financial prospects of this venture.'' [739] Peha argued that the fees should be set in advance of the auction because ''no public safety agency will purchase equipment to use a system unless it can be certain that the monthly fees will be reasonable for the life of that equipment, if not indefinitely.'' [740] Similarly, Mercatus urged the Commission to provide ''more specificity on what the D Block licensee may charge public safety users.'' [741]

379. The PSST indicated that it ''understands the desire by some parties that service fees be set prior to the auction, [but] sees no reasonable way of doing so.'' [742] Specifically, the PSST argued that ''[n]etwork service fees will and should have some correlation to network costs. But those costs will vary considerably depending on the D Block winner.'' [743] In this regard, the PSST observed that ''[a]n incumbent with built-out infrastructure and an in-place retail service business will have different requirements than a new entrant that would need to build a network from scratch or from a winner that elects to operate on a wholesale-only basis.'' [744] Accordingly, the PSST argued that ''it is not possible to determine service fees prior to knowing the identity and business plans of the D Block winner.'' [745]

380. The PSST added that it is ''opposed to allowing the D Block licensee to recoup the incremental cost of a public safety-quality build from public safety users,'' which arrangement the PSST argued would ''not be materially different than if the PSST were to pay an incumbent wireless carrier to augment its existing facilities to support a public safety-grade 700 MHz system, particularly if the carrier was deploying its own 700 MHz network.'' [746] According to the PSST, the ''better approach is to encourage the parties to negotiate a mutually acceptable rate(s) for public safety entities, one that will encourage widespread public safety adoption and that also provides the D Block operator with reasonable compensation consistent with the benefits it is receiving from the partnership arrangement,'' but in all cases, ''the FCC should continue to specify a requirement (or at least an expectation) that the fees paid by public safety users should be substantially lower than the fees paid by the D Block licensee's commercial customers.'' [747]

381. Northrop Grumman urged the Commission ''to adopt an objective method for the determination of fees, including a mechanism to segregate and define the charges to public safety users, with cost recovery using a ''no profit, no loss'' or similar framework.'' [748] According to Northrop Grumman, such an approach would ''align the incentives of the D Block licensee and the PSBL toward serving public safety's needs, and ensure that the costs of public safety's needs are met without conflicting with overall viability of the shared network.'' [749]

382. Televate contended that the ''maximum service price for priority public safety services must be

[727] *Second Report and Order*, 22 FCC Rcd at 15449 para. 451.

[728] *Second Report and Order*, 22 FCC Rcd at 15449 para. 451. Elsewhere, the Commission stated that this ''[p]riority service, although provided to public safety, will still be commercial, and will not appreciably impair the D Block licensee's ability to provide commercial services to other parties.'' *Id.* at 15437 para. 413.

[729] *Second FNPRM*, 23 FCC Rcd at 8094 para. 132.

[730] *Second FNPRM*, 23 FCC Rcd at 8094 para. 132.

[731] *Second FNPRM*, 23 FCC Rcd at 8094 para. 132.

[732] *Second FNPRM*, 23 FCC Rcd at 8094 para. 132.

[733] *Second FNPRM*, 23 FCC Rcd at 8094 para. 132.

[734] *Second FNPRM*, 23 FCC Rcd at 8094 para. 132.

[735] *Second FNPRM*, 23 FCC Rcd at 8094–95 para. 133.

[736] *Second FNPRM*, 23 FCC Rcd at 8094–95 para. 133.

[737] *Second FNPRM*, 23 FCC Rcd at 8094–95 para. 133.

[738] *Second FNPRM*, 23 FCC Rcd at 8094–95 para. 133.

[739] AT&T Comments at 20.

[740] Peha Comments at 13.

[741] Mercatus Comments at 2.

[742] PSST Comments at 37.

[743] PSST Comments at 37.

[744] PSST Comments at 37.

[745] PSST Comments at 37.

[746] PSST Comments at 36.

[747] PSST Comments at 36–37.

[748] Northrop Grumman Comments at 8.

[749] Northrop Grumman Comments at 8.

discounted from list rates by at least 20 percent.''[750] Televate also suggested that bidders should somehow be credited for offering ''higher levels of discounts off commercial list prices'' and ''innovative methods to bring the maximum number of public safety personnel on to the network.''[751] Gerard Eads, a ''communications administrator,'' urged the Commission to require ''that public safety agencies access the system at no recurring charge'' and subsidize their fees using revenue from the auction.[752]

383. NTCH proposed the imposition of ''a relatively modest usage fee,'' the proceeds from which could ''pay the ongoing costs of the public safety licensee as well as system maintenance.''[753] According to NTCH, the service could still be provided at a discount to costs currently incurred by public safety entities and ''the charge to public safety users for unlimited calling would be equivalent to similar charges to a private sector user for unlimited calling plans and data transfers over the network.''[754] U.S. Cellular asserted that to ''increase the attractiveness'' of less populated geographic areas in the D Block, the Commission could make ''the service fees more commercially attractive (in areas with low volumes of public safety usage, lower charges for the D Block licensee's use of the public safety spectrum, and higher charges for public safety agencies' use of the D Block spectrum).''[755] California argued in favor of implementing ''a small incremental cost increase in a 'heavy use' area as a means of offsetting the cost for providing service to a 'low use' area.''[756]

384. Some commenters argued that the Federal government should subsidize the public safety network. RPC 33 argues that the user fees should be ''fair and equitable to all concerned'' and that funding for the network should come from the Federal government until the D Block spectrum becomes profitable.[757] Wireless RERC supported capping fees that could be charged to public safety entities and contends the network costs could be subsidized using ''funds appropriated by Congress, federal grants, or a cost-recovery fund.''[758]

385. APCO indicated that ''per unit and aggregate service pricing has been a major concern for APCO since the inception of this process.''[759] Specifically, APCO argued that ''it will almost always cost more to provide an equal level of service to the smaller agency that works in remote areas and have wide jurisdictional areas than it will to cover a dense urban area.''[760] APCO suggested that the imbalance in equalizing rates between populated versus less populated areas could be addressed through such measures as ''blanket Federal subsidies,'' ''a rate structure that is subsidized by the other users,'' or for the Commission ''to collect a user fee on all users, similar to a 911 service fund or fee.''[761] In all cases, however, APCO recommended that the Commission ''take full advantage of an advisory rate board, commission or advisory group to assist in establishing the rates and future adjustments to them.''[762] APCO also suggested that the Commission allow the ''PSBL and the D Block licensee to negotiate with qualified public safety agencies to accept capital investments or the use of publicly funded capital investment in exchange for reduced rates.''[763]

386. AT&T argued that the Commission ''must promulgate guidelines that address the service fees commercial partners may charge local public safety users * * * .''[764] AT&T further argued that ''[p]otential commercial partners require such clarification in order to evaluate the financial prospects of this venture'' and that, therefore, if ''the Commission intends to restrict the type or amount of service fees a commercial partner may charge a local public safety user, the Commission must clearly explain this restriction prior to an RFP process or a reauction.''[765]

387. *Discussion*. Resolving the matter of service fees for public safety use of the broadband network requires us to carefully balance the interests of potential D Block bidders and public safety users of the network.[766] It is also important to provide both sets of stakeholders with a fee structure that is reasonably stable and predictable, notwithstanding the difficulty of determining such fees given the limited information before us.[767] The Commission agrees with commenters that potential commercial participants need sufficient pre-auction information regarding fees to help them evaluate the financial prospects of providing both a commercial- and public safety-oriented service.[768] Similarly, the Commission believes that public safety agencies need specificity regarding prospective fees in order to ensure their timely commitment to use the public safety spectrum and to enable them to plan and budget for the use of the new network.

388. As an initial matter, with regard to those commenters who argue that the fees charged to public safety users of the shared network should be subsidized by the Federal government, whether on an ongoing basis or through the use of auction proceeds,[769] the Commission notes that the Commission's lack the authority to obligate Federal funds in such fashions. In addition, while the Commission finds Northrop Grumman's concept of a ''no profit, no loss'' or similar framework appealing,[770] the Commission does not believe that the Commission should prohibit the D Block licensee from deriving income from public safety users of the public safety spectrum. The Commission agrees with the general consensus of most commenters, however, that any fees charged to public safety users should be discounted as compared to the fees charged to commercial users.

389. The Commission tentatively concludes, therefore, that the Commission should establish fixed nationwide service fees that the D Block licensee may charge to public safety users based upon a discounted rate schedule. The Commission believes that adopting a fee schedule nationwide will ensure uniform standards and practices in the 700 MHz band, rapid adoption and deployment by public safety users, and provide an efficient cost structure for the D Block licensee(s) as it builds out a network capable of supporting commercial and public safety users.

390. As the Commission considers the specific fees to be mandated, the Commission tentatively concludes that the rates being offered today for

[750] Televate Comments at 10.

[751] Televate Comments at 10.

[752] Eads Comments at 3.

[753] NTCH Comments at 6.

[754] NTCH Comments at 6.

[755] U.S. Cellular Comments at 14, 22.

[756] California Comments at 5.

[757] RPC 33 Comments at 5.

[758] Wireless RERC Comments at 12–13.

[759] APCO Comments at 14.

[760] APCO Comments at 14.

[761] APCO Comments at 15.

[762] APCO Comments at 15.

[763] APCO Comments at 16.

[764] AT&T Reply Comments at 20; *see also* Northrop Grumman Comments at 7–8; Peha Comments at 13; Wireless RERC Comments at 12–13.

[765] AT&T Reply Comments at 20. AT&T also recommended guidelines addressing spectrum usage fees, and asserted that, if ''the Commission permits the PSBL to charge access fees, the Commission should ensure that such payments be negotiated * * * using commercial practices for cost recovery for the PSBL.'' *Id.*

[766] *See* AT&T Comments at 20. The Commission also recognizes Peha's argument that a failure to determine rates *ex ante* could adversely affect public safety purchase of 700 MHz equipment. *See* Peha Comments at 13.

[767] *See* Peha Comments at 13.

[768] *See, e.g.*, AT&T Comments at 20.

[769] *See* Eads Comments at 3.

[770] *See* Northrop Grumman Comments at 8.

broadband wireless data service provide a sufficient, forward-looking benchmark upon which to establish a nationwide fee schedule. The Commission tentatively concludes that the characteristics of services, such as those offered by Verizon Wireless, AT&T Mobility, Sprint Nextel, and T-Mobile, are consistent with those that will be associated with the public safety broadband network. The Commission also finds that offering such discounted fixed rates is a standard practice of nationwide and regional wireless carriers that have established voice and data service prices for public safety and government users. The Commission bases its conclusion on a survey of contracts, as presented in Table 2, that are presently offered to governments and public safety authorities for wireless voice and data services.[771]

TABLE 2—SURVEY: DISCOUNTED WIRELESS DATA PLANS

Contracting entity	Wireless operator	Service plan[772]	Monthly service charge
General Services Administration[773]	Verizon Wireless	VZAccess (NationalAccess/ BroadbandAccess)	$48.59
Western States Contracting Alliance[774]	Verizon Wireless	BroadbandAccess for Internet and E-mail	49.19[775]
	Sprint PCS	Sprint PCS Connection Card Unlimited Usage (applies to usage on both 1xRTT and EVDO networks).	49.99
	T-Mobile[776]	T-Mobile Total Internet, Unlimited Usage	33.99[777]
		T-Mobile Total Internet for Data Cards, Unlimited Usage	42.49[778]
	AT&T Mobility[779]	Public Safety Unlimited Data	49.99
State of New York[780]	Verizon Wireless	VZAccess (NationalAccess/BroadbandAccess)	48.59
	Sprint Nextel	Unlimited Connection Plan EVDO DataLink	59.99
		Unlimited Connection Plan 1xRTT DataLink	59.99
State of Florida[781]	AT&T Mobility	Wireless Data Usage Plan, Unlimited Usage	43.99
	Sprint	Wireless Data Usage Plan, Unlimited Usage	44.99
	Verizon Wireless	Wireless Data Usage Plan, Unlimited Usage	52.59

391. Generally, the service rates charged by these carriers apply nationwide, thus providing a useful model for establishing a nationwide, fixed rate schedule for public safety users of the shared wireless broadband network. Based on the Commission survey, the average discounted service charge is approximately $48.50 per month, which thus may serve as an appropriate amount. In sum, the Commission seeks comment on its tentative conclusions that it should set a specific service fee for public safety users and that such fee be based on rates charged to government users of existing wireless, voice, and data services. The Commission also seeks comment on whether a rate of $48.50 per user per month as the base rate that will be charged to all public safety users is reasonable.

392. In developing a proposed base rate, the Commission seeks to achieve the best approximation of what a competitive, yet discounted rate should be for these services. The Commission

[771] *See, e.g.*, General Services Administration, Federal Supply Service, Cellular/PCS Services, Contract # GS-35F-0119P, available at *https://www.gsaadvantage.gov/ref_text/GS35F0119P/0EA660.1OSTP9_GS-35F-0119P_GSAADVANTAGEMOD12GS35F0119P040408.PDF* (last viewed on August 27, 2008); Western State Contracting Alliance, at *http://www.aboutwsca.org/welcome.cfm* (last viewed on August 27, 2008); State of New York, Office of General Services, Procurement Services Group, Contract Number PS61217, Group Number 77008 (effective August 15, 2007), available at *http://www.ogs.state.ny.us/purchase/prices/7700802459prices1207.pdf* (last viewed on August 27, 2008).

[772] The Commission notes that some of these plans contain restrictions on the use of the wireless data network. For example, Verizon Wireless' contracts discussed herein stipulate its wireless data services may only be used for ''(i) Internet browsing, (ii) e-mail, and (iii) intranet access (including access to corporate Intranets, e-mail and individual productivity applications like customer relationship management, sales force and field automation.'' Verizon Wireless specifically prohibits uses including the '' (i) continuous uploading, downloading or streaming of audio or video programming or games, (ii) server devices or with host computer applications, other than applications required for enhanced phone applications, including but not limited to web camera posts or broadcasts, automatic data feeds, automated machine-to-machine connections, or peer-to-peer file sharing, or (iii) as a substitute or backup for private lines or dedicated data connections.'' Similarly, Sprint Nextel's contract stipulates that ''[s]ervices are not available for use in connection with server devices or host computer applications, other systems that drive continuous heavy traffic or data sessions.'' *See* State of New York, Office of General Services, Verizon Wireless Contract Number PS61217 (effective August 15, 2007), available at *http://www.ogs.state.ny.us/purchase/prices/7700802459prices1207.pdf* (last viewed on August 27, 2008) (*New York State Verizon Wireless Contract*); Sprint Nextel Contract Number PS60701 (effective July 15, 2007), available at *http://www.ogs.state.ny.us/purchase/prices/7700802459prices1207.pdf* (last viewed on August 27, 2008) (*New York State Sprint Nextel Contract*). *See also* General Services Administration, Federal Supply Service, Cellular/PCS Services, Contract # GS–35F–0119P, available at *https://www.gsaadvantage.gov/ref_text/GS35F0119P/0EA660.1OSTP9_GS-35F-0119P_GSAADVANTAGEMOD12GS35F0119P040408.PDF* (last viewed on August 27, 2008) (*GSA Verizon Wireless Contract*).

[773] *GSA Verizon Wireless Contract.*

[774] The WSCA is comprised of state purchasing directors that negotiate purchasing contracts for goods and services. WSCA membership consists of the principal procurement official that heads the state central procurement organization, or designee for that state, from the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. In addition, the following states use WSCA contracts: Alabama, Arkansas, Florida, Georgia, Iowa, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Maryland, Maine, Michigan, Missouri, Mississippi, North Carolina, Nebraska, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Wisconsin, and the District of Columbia.

[775] This amount reflects an 18% discount that Verizon Wireless extends to signatories of the WSCA contract. According to Verizon Wireless, the standard rate is $59.99. *See* Verizon Wireless, at *https://b2b.verizonwireless.com/b2b/commerce/shop/viewPlanDetail.go?planId=48372* (last viewed on August 27, 2008).

[776] Under its contract with the WSCA, T-Mobile extends a 15% discount on recurring monthly charges. *See* WSCA, Contract for Services of Independent Contractor, T-Mobile USA, available at *http://purchasing.state.nv.us/Wireless/T-Mobile_Contract.pdf* (last viewed on August 27, 2008).

[777] This amount reflects a 15% discount off the $39.99 retail rate.

[778] This amount reflects a 15% discount off the $49.99 retail rate.

[779] *See* WSCA, Contract for Services of Independent Contractor, AT&T Mobility, available at *http://purchasing.state.nv.us/Wireless/Cingular_BB.pdf* (last viewed on August 27, 2008).

[780] *New York State Verizon Wireless Contract; New York State Sprint Nextel Contract.*

[781] State of Florida, Department of Management Services, MyFloridaSUNCOM Services, at *http://dms.myflorida.com/cits/portfolio_of_services/suncom/wireless_services/wireless_data_services_aircard* (last viewed August 27, 2008).

seeks to ensure an initial stable service arrangement between the D Block licensee(s) and the public safety user community by establishing an initial flat rate for service based on appropriate considerations of commercial viability and the generally limited financial means of the public safety community. The Commission believes this is an important consideration towards ensuring widespread adoption of advanced interoperable services by the public safety community. The Commission recognizes, however, that the factors that determine service rates are not static, and that over time marketplace forces will need to be taken into account in the adjustment of public safety service rates. Thus, the Commission tentatively concludes that the Commission will allow the fixed rates the Commission ultimately adopts to sunset coterminous with the expiration of the fourth year buildout requirement, at which point the Commission expects the D Block licensee(s) will be providing service to a significant portion of the nation's public safety community. In the fifth year of operation, the Commission expects that the commercial market for D Block spectrum and services will have sufficiently developed so that the General Services Administration likely will have developed a fee schedule for government users of the commercial spectrum. At that time, the Commission proposes to use that schedule as the basis for adjusting public safety fees for use of the network. The Commission seeks comment on this proposal.

c. Other Essential Components

393. *Background.* In the *Second Report and Order*, the Commission established certain minimum criteria that the Public Safety Broadband Licensee must meet in order to ensure that it ''focuses exclusively on the needs of public safety entities that stand to benefit from the interoperable broadband network.'' [782] In particular, the Commission established certain criteria for the Public Safety Broadband Licensee eligibility, including a requirement that the Public Safety Broadband Licensee must be broadly representative of the public safety community.[783] The Commission also required that the Public Safety Broadband Licensee be governed by a voting board consisting of eleven members, one each from the nine organizations representative of public safety, and two at-large members selected by the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau, jointly on delegated authority.[784] On reconsideration, the Commission revised and expanded the voting board, and increased the at-large membership to four.[785]

394. The Commission also required that certain procedural safeguards be incorporated into the articles of incorporation and bylaws of the Public Safety Broadband Licensee.[786] For example, the Commission specified that the term of the Public Safety Broadband Licensee officers would be two years, and that election would be by a two-thirds majority vote.[787] A two-thirds majority was also required for certain other Public Safety Broadband Licensee decisions, including amending the articles of incorporation or bylaws.[788] The Commission also recognized the importance of Commission oversight in the affairs of the Public Safety Broadband Licensee, which the Commission enabled by requiring the Public Safety Broadband Licensee to submit certain reports to the Commission, including quarterly financial disclosures.[789]

395. In the *Second FNPRM,* the Commission sought to reexamine the structure of the Public Safety Broadband Licensee and the criteria adopted in the *Second Report and Order* to ensure they are optimal for establishing and sustaining a partnership with a commercial entity, and for efficiently and equitably conducting the business of the Public Safety Broadband Licensee. As developed more fully below, the Commission sought comment on whether the Commission should reevaluate any of these criteria, whether the Commission should clarify or increase the Commission's oversight of the Public Safety Broadband Licensee, and whether the Commission should make other changes to the license or license eligibility criteria.[790] The Commission further sought comment on how the Commission can ensure an oversight role for Congress; whether State governments should assume responsibility for coordinating the participation of the public safety providers in their jurisdictions; and whether, in light of possible changes to the eligibility and other criteria that govern the Public Safety Broadband Licensee, the Commission should rescind the current 700 MHz Public Safety Broadband License and seek new applicants.[791]

(i) Articles of Incorporation and By-Laws

396. *Background.* With respect to the articles of incorporation and bylaws that govern the Public Safety Broadband Licensee, the Commission sought comment on the adequacy of the current requirements.[792] The Commission sought comment, for example, on whether the Commission should require a unanimous or super-majority vote in certain instances, whether the Commission should provide for Commission review of such decisions, and whether the Commission should make certain decisions for the Public Safety Broadband Licensee if unanimity or supermajority is not achieved.[793] With respect to the voting board, the Commission sought comment on the composition, size and qualifications of the board.[794] The Commission also sought comment on whether the Commission should eliminate altogether the requirement of inclusion of specific

[782] *Second Report and Order*, 22 FCC Rcd at 15421–22 para. 373.

[783] *Second Report and Order*, 22 FCC Rcd at 15421–25 paras. 373–375.

[784] The nine organizations included: the Association of Public Safety Communications Officials (APCO); the National Emergency Number Association (NENA); the International Association of Chiefs of Police (IACP); the International Association of Fire Chiefs (IAFC); the National Sheriffs' Association (NSA); the International City/County Management Association (ICMA); the National Governor's Association (NGA); the National Public Safety Telecommunications Council (NPSTC); and the National Association of State Emergency Medical Services Officials (NASEMSO). *Second Report and Order*, 22 FCC Rcd at 15422–23 para. 374.

[785] On reconsideration, the Commission removed NPSTC and included the Forestry Conservation Communications Association (FCCA), the American Association of State Highway and Transportation Officials (AASHTO), and the International Municipal Signal Association (IMSA), and added two additional at-large positions. Service Rules for the 698–746, 747–762 and 777–792 MHz Bands, WT Docket No. 96–86, *Order on Reconsideration*, 22 FCC Rcd 19935 (2007) (*Order on Reconsideration*). The Chiefs of the Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau jointly appointed to the voting board the American Hospital Association (AHA), the National Fraternal Order of Police (NFOP), the National Association of State 9–1–1 Administrators (NASNA), and the National Emergency Management Association (NEMA). *See* ''Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Four At-Large Members of the Public Safety Broadband Licensee's Board of Directors,'' *Public Notice*, 22 FCC Rcd 19475 (PSHSB 2007).

[786] *Second Report and Order*, 22 FCC Rcd at 15423–26 para. 375.

[787] *Second Report and Order*, 22 FCC Rcd at 15423–26 para. 375.

[788] *Second Report and Order*, 22 FCC Rcd at 15423–26 para. 375.

[789] *Second Report and Order*, 22 FCC Rcd at 15426 paras. 376–77.

[790] *Second FNPRM*, 23 FCC Rcd at 8067 para. 48.

[791] *Second FNPRM*, 23 FCC Rcd at 8067 para. 48.

[792] *Second FNPRM*, 23 FCC Rcd at 8067 para. 49.

[793] *Second FNPRM*, 23 FCC Rcd at 8067 para. 49.

[794] *Second FNPRM*, 23 FCC Rcd at 8067 para. 50.

voting board members, and if so, how the Commission could ensure broad representation of the public safety community.[795] With respect to the leadership of the board, the Commission asked whether the Commission should revise the terms of the officers; whether the Commission should require a unanimous vote for appointment of officers; whether the Commission should require a rotating chairmanship among the voting board members; and whether the Commission should appoint a chairperson in the event that unanimous consent cannot be attained on appointing such person.[796]

397. *Comments.* There were a number of comments addressing the composition of the PSBL board of directors and board transparency and voting matters.

398. Board Composition. For its part, the PSST indicated that it ''opposes any change in the composition of its Board, including the possibility of including representatives from a variety of non-public safety entities.'' [797] In this regard, the PSST asserted that ''the PSST is structured in strict compliance with all applicable FCC requirements,'' [798] and, as currently constituted, ''collectively represents virtually every type of public safety and governmental entity that is eligible to operate on the SWBN pursuant to the PSBL license and their interests have been well-represented in the Board's highly collaborative decision making processes.'' [799] Rather than revise its organizational make-up, the PSST argued that the Commission should ''instead work with the organizations represented on the current PSST Board to address any major concerns about the organizational structure and governance of the organization.'' [800] The PSST further indicated that the Commission should not prohibit the PSST Chairman of the Board of Directors from also serving as Chief Executive Officer in favor of creating a separate position of President/CEO to manage the PSST's business ''unless the Commission has some definite funding mechanism for the PSST/PSBL to pay for such a position.'' [801]

399. IACP argued that the present PSBL board ''represents not only the myriad of agencies, but those who finance, operate and manage public safety systems.'' [802] IACP further asserted that reducing ''the number of the Board'' would ''dilute'' the link between the Board and public safety.[803] IACP also asserted that any expertise needed in telecommunications, finance and/or management can be obtained through the retention of experts.[804] AASHTO asserted that adding any more PSBL board members ''could create a body so unwieldy it is unable to react to the ever changing needs of its users in a timely manner.'' [805] Ericsson advises that changing the PSBL board composition ''at this time could impose additional delay * * * and create a new source of uncertainty.'' [806] Other commenters similarly urged the Commission not to reassess the composition or size of the Public Safety Broadband Licensee's board.[807]

400. A number of commenters, however, proposed various changes to the Public Safety Broadband Licensee's governance structure. APCO, for example, suggested various modifications regarding membership in the Public Safety Broadband Licensee. First, APCO asked the Commission to ''clarify that the organizations it names [to the board] must be the actual members of the PSBL board to the extent that this can be done without creating undue financial liability to the respective organizations.'' [808] Second, APCO contended that ''the large size of the PSST board has led to over-reliance on the Chairman/CEO and a three-person executive committee (the chairman, vice-chairman, and secretary/treasurer),'' and proposed that a ''smaller board would allow for a more inclusive decision-making.'' [809] Third, APCO argued that the PSBL board ''does not provide sufficient diversity of interests or required expertise to undertake the extraordinary tasks at hand,'' such as ''designing or operating public safety communications systems'' and in the fields of ''business, finance, [and] communications technology.'' [810] According to APCO, such lack of experience on the board leads the PSST ''to rely even more heavily on the advice of its agent/advisor and limits its ability to engage in a thorough critique of that advice.'' [811] APCO suggested that the Commission change the composition of the PSBL board to ''a board of eight to twelve members, with approximately half of the members being diverse organizations that represent potential users of the network and those with expertise in public safety communications matters'' and the other half composed of ''individuals selected by the Commission who do not represent any particular organization but who would add critical knowledge and expertise to the PSBL's decision making.'' [812] APCO further recommended that the ''position of the Chairman of the board of directors'' should be separated ''from the position of CEO/President'' because of the very different responsibilities of the two positions.'' [813] APCO, however, did ''not support term limits or mandatory rotation of the chairmanship.'' [814]

401. Region 33 suggested that PSBL board membership be ''limited to no more than nine members, jointly selected and approved by both the FCC's PS&HSB and the LMCC.'' [815] Region 33 indicated that board membership should be composed ''entirely from the not-for-profit public safety community,'' although ''ex-officio members could be from the private sector to serve [in a] technical advisory role but [would] not vot[e] on the governing issues.'' [816]

402. NATOA indicated concern ''that local governments are not adequately represented by the current makeup of the [PSST].'' [817] NATOA observed that ''local services, systems, property, and personnel will be directly affected by the construction of a nationwide public safety broadband network,'' and argued that ''the exclusion of such representation deprives the PSBL of the insights and experience of elected local government officials that represent the entities the PSBL is charged to serve.'' [818] Other commenters supported this view.[819]

403. NRPC requested that the Commission name it as ''a full voting

[795] *Second FNPRM*, 23 FCC Rcd at 8067 para. 50.

[796] *Second FNPRM*, 23 FCC Rcd at 8067 para. 50.

[797] PSST Reply Comments at 17. *See also* PSST Comments at 47.

[798] PSST Comments at 45.

[799] PSST Comments at 45–46.

[800] PSST Comments at 47.

[801] PSST Comments at 46.

[802] IACP Reply Comments at 3.

[803] IACP Reply Comments at 3.

[804] IACP Reply Comments at 3.

[805] AASHTO Comments at 11. In this context, AASHTO advises against adding a Commission or Congressional representative to the Board. *Id.*

[806] Ericsson Comments at 8.

[807] *See, e.g.*, IMSA Comments at 11; IMSA Reply Comments at 7–8; ICMA Reply Comments at 2; NPSTC Reply Comments at 7.

[808] APCO Comments at 22.

[809] APCO Comments at 22.

[810] APCO Comments at 22.

[811] APCO Comments at 22.

[812] APCO Comments at 24. NENA agreed with APCO's recommendations on widening the relevant experience of Board members. *See* NENA Comments at 4.

[813] APCO Comments at 21.

[814] APCO Comments at 21.

[815] RPC 33 Comments at 7.

[816] RPC 33 Comments at 7. *See also* Lencioni Comments at 2 (the PSBL should ''be a[s] broadly representative of the public safety radio user community as possible'').

[817] NATOA *et al.* Comments at 15.

[818] NATOA *et al.* Comments at 16.

[819] *See* Philadelphia Comments at 4. Philadelphia expressly endorses ''the proposal by NATOA'' in this regard. *Id. See also* Philadelphia Reply Comments at 2; Florida Comments at 4.

member organization on the Public Safety Broadband Licensee.'' [820] In this regard, NRPC indicated that it could provide ''a perspective on the 700 MHz narrowband reallocation issue and transition as well as the necessary coordination aspects,'' and could ''contribute to the effectiveness and coordinated use of the 1 MHz Guard Band between 768–769–798–799 MHz.'' [821]

404. *Board Transparency and Voting.* The PSST stated that ''for the most part, conducting open meetings is a good idea to facilitate its efforts to work cooperatively with members of the public safety community, as well as with vendors, commercial operators, and other parties, and believes that appropriate changes in its procedures should be evaluated by the Board.'' [822] APCO urged ''that the FCC require the PSBL board meetings be held in public, with the proviso that the board may go into executive session to address sensitive matters,'' but with ''minutes * * * describ[ing] the matters addressed in executive session to the extent possible without revealing sensitive information.'' [823] Peha similarly stated that ''one essential requirement [of the PSBL] is transparency,'' and that ''requirements related to transparency should be added to the list [of requirements to become the [PSBL],'' and that the ''current [PSBL], the PSST, would not meet such requirements, and would therefore be ineligible.'' [824] Other commenters expressed similar views.[825] AASHTO, however, argued that ''[a]s a private entity the PSST is not required to make its meetings open to the general public.'' [826]

405. With respect to voting issues, the PSST and other commenters opposed the adoption of any unanimous voting requirement for the Public Safety Broadband Licensee board decisions on the basis that such a requirement could lead to stalemates and dilute leadership accountability.[827] NPSTC observed that ''[u]nanimous [voting] rules [ ] place in the hands of one or a few the ability to thwart the best ideas and initiatives.'' [828] Both the PSST and APCO, however, supported super-majority voting on certain matters, including election of officers.[829] The IMSA urged the Commission not to ''micromanage the affairs of the PSST by adopting additional rules on voting majorities.'' [830]

406. *Discussion.* The Commission agrees with commenters who advocate revising the Public Safety Broadband Licensee's organizational structure to enhance the Public Safety Broadband Licensee's operational efficiency and transparency. In light of the unique representative nature of the license, which the Public Safety Broadband Licensee holds on behalf of those public safety entities eligible to utilize this spectrum, the public interest favors any changes to the Public Safety Broadband Licensee's organizational structure that will better ensure that its actions reflect due consideration of the broad panoply of public safety interests it represents. The Commission also considers it important to hold the PSBL to a standard of transparency that will ensure that its obligations are met in a manner that instills public confidence in both the process and the outcome of its actions. The Commission believes improvements in these areas can be achieved with a few modifications to the Public Safety Broadband Licensee's current organizational structure, along with other modifications the Commission are proposing with respect to the Public Safety Broadband Licensee's Board's meeting and voting requirements.

407. *Board Composition.* The Commission tentatively concludes that the Commission will retain the current PSBL board composition, except that the Commission proposes to replace the National Emergency Management Association (NEMA) [831] on the board with the National Regional Planning Council (NRPC). The Commission proposes to remove NEMA as a representative organization on the board because its initially appointed representative has consistently failed to attend board meetings and the organization has not otherwise materially participated in PSBL board activities. Because NEMA has not meaningfully participated as a member organization of the PSBL, the Commission tentatively concludes that it no longer would serve the public interest to include NEMA as a PSBL board member.

408. The Commission proposes adding NRPC as a replacement board member for a number of reasons. The NRPC is a national organization drawn from the FCC-authorized Regional Planning Committees (RPCs), whose affiliation is linked to the states and U.S. Territories. The NRPC's mission is to serve public safety communications users through planning and management to meet their spectrum needs.[832] As the Commission observed in the *Second FNPRM,* and consistent with the Commission tentative conclusions herein, the Commission anticipates that some of the PSBL's roles and responsibilities will be akin to the functions presently performed by the 700 MHz RPCs.[833] Thus, the NRPC would bring important and relevant experience to the PSBL board by virtue of its role in assisting regions with coordinating 700 MHz public safety spectrum use. The Commission also agrees with the NRPC's comments on its own behalf that its addition to the board would prove valuable to the PSBL in terms of the narrowband relocation process, and concerning coordination between the use of the public safety broadband spectrum and the guard band and narrowband allocations.[834] The Commission seeks comment on these tentative conclusions.

409. On a related matter, as noted above, APCO requests that the Commission clarify that the organizations the Commission names as PSBL board members ''must be the actual members of the PSBL board'' in order to avoid ''discourag[ing] organizational input into matters being voted upon by the PSST Board.'' [835] One of the core eligibility requirements of the PSBL is that it be as representative of the public safety community as possible.[836] The member organizations were selected in part based on their representation of various sectors of the public safety community. While some member organizations may choose to delegate all decision-making authority to their PSBL representatives on the board, others may prefer that their representatives seek internal approvals so that the member organization can assure that the positions taken by its board representative are reflective of the organization's core membership. Accordingly, the Commission

[820] NRPC Comments at 6.

[821] NRPC Comments at 6.

[822] PSST Reply Comments at 16.

[823] APCO Comments at 21.

[824] Peha Comments at 9.

[825] *See, e.g.,* RPC 20 Reply Comments at 11; NATOA *et al.* Reply Comments at 7.

[826] AASHTO Reply Comments at 5.

[827] *See* PSST Comments at 46; NPSTC Comments at 22; APCO Comments at 21.

[828] NPSTC Comments at 22.

[829] PSST Comments at 46; APCO Comments at 21.

[830] IMSA Comments at 11.

[831] NEMA is composed of state directors of emergency management, and is dedicated to enhancing public safety by improving the nation's ability to prepare for, respond to and recover from all emergencies, disasters, and threats to the Commission nation's security. *See http://www.nemaweb.org.*

[832] *See* National Regional Planning Council at *http://www.nrpc.us/index.jsp.*

[833] *Second FNPRM,* 22 FCC Rcd at 8091 para. 122.

[834] *See* NRPC Comments at 6.

[835] APCO Comments at 22.

[836] *See* 47 CFR 90.523(e)(3).

tentatively concludes that representatives of member organizations, in their service on the PSBL board, should be permitted reasonable accommodation to seek approval of their respective organization's leadership. At the same time, the Commission would expect the PSST to provide sufficient advance notice of issues to be decided so that board members can obtain any organizational approvals ahead of time, without causing undue delay to board actions. The Commission seeks comment accordingly.

410. *Chief Executive Officer.* The Commission agrees with APCO that the position of Chairman of the PBSL board of directors should be separated from the position of Chief Executive Officer (CEO) because of the very different responsibilities of the two positions. The Chairman primarily has management responsibilities, while the CEO primarily has charge of day-to-day operations. Separating these positions would allow for a discrete focus on two very different responsibilities, and thus increased efficiency. Accordingly, the Commission tentatively concludes that the Public Safety Broadband Licensee's positions of Chairman of the Board and Chief Executive Officer must be filled by separate individuals. The Commission's proposal would require that the PSST implement such separation within 30 days of adoption of an Order issuing final rules in this proceeding. Further, the Commission proposes that the PSST may not hire a new individual to fill the CEO position until the D Block licensee(s) has made funding available for the PSBL's administrative and operational costs. In recognition of the separate functions of these roles, the Commission also proposes that any individual appointed as CEO cannot have served on the PSBL executive committee during the period three years prior to his or her appointment as CEO. In this regard, the Commission proposes that the Public Safety Broadband Licensee's bylaws be amended to include the following provision: ''*Duties of Chief Executive Officer.* The CEO shall have responsibility for the general supervision and direction of the business and affairs of the Public Safety Broadband Licensee, subject to the control of the Board, and shall report directly to the Board. No CEO shall have served on the Public Safety Broadband Licensee's Executive Committee for a period of 3 years prior to appointment.''

411. *Officers.* The Commission also agrees with APCO that some action should be taken to redress what APCO describes as a previous ''over-reliance on the [PSST's] Chairman/CEO and a three-person executive committee (the chairman, vice-chairman, and secretary/treasurer),'' which APCO describes as having exercised ''a substantial degree of discretion without sufficient opportunities for input from other board members.'' [837] The Commission does not agree with APCO, however, that any such ''over-reliance'' need be resolved by reducing the size of the PSBL board of directors.[838] The current members of the board were appointed with due consideration, and with particular attention to the need to establish a board that is broadly representative of the public safety community.[839] The Commission believes that any reduction in the number of board members would diminish this important objective. Instead, the Commission tentatively concludes that the executive committee should be reformed. Accordingly, the Commission proposes to require the PSST board to elect a new executive committee—*i.e.*, the PSST must elect a new Chairman, Vice-Chairman, and Secretary/Treasurer within 30 days of adoption of an Order issuing final rules in this proceeding. The Commission proposes that these executive committee members: (i) Must be limited to a term of 2 years; and (ii) may not serve consecutive terms in the same position. The Commission further proposes that no current executive committee member may be re-elected to the same position on the committee.[840] The Commission also proposes to prohibit the PSBL from expanding its executive committee beyond these three offices. The Commission seeks comment on these proposals.

412. *Supermajority Voting.* The Commission tentatively concludes that the Commission will require three-fourths supermajority voting on all major decisions by the PSBL board of directors. Specifically, for selection of the CEO and election of officers, the Commission proposes to require a three-fourths vote of board members present at the board meeting. The Commission also proposes to require a three-fourths vote of all board members (not limited to those present at the board meeting) for changes in the articles or bylaws, approval of any contract of a cumulative value exceeding $25,000 per year, and approval of any expenditure exceeding $25,000 per item. Both the PSST and APCO supported supermajority voting for certain decisions.[841] The Commission believes that requiring a three-fourths vote, instead of the two-thirds majority vote currently required for most major PSBL board decisions, will further ensure that the PSBL will only undertake major actions that have the broad support of the PSBL's representative constituents.

413. *Public Board Meetings.* The Commission observes that both the PSST itself as well as public safety interests support the opening of PSBL board meetings to the public.[842] The Commission thus tentatively concludes that the Commission will require PSBL board meetings to be open to the public, except that the board will have a right to meet in closed session to discuss sensitive matters.[843] Further, the Commission proposes that the PSBL must make the minutes of each board meeting publicly available, including portions of meetings held in closed session, but that the published minutes of closed sessions may be redacted. The Commission further proposes that the PSBL must provide the public with no less than 30 days advance notice of meetings. Relatedly, the Commission tentatively proposes to require that the PSBL present its annual, independently audited financial report (which is a new financial reporting obligation the Commission are proposing elsewhere in this Third FNPRM) in an open meeting. The Commission expects that all of these measures will improve the efficiency and transparency of the PSBL's actions, and seek comment accordingly.

(ii) Commission and/or Congressional Oversight

414. *Background.* With respect to enhancing oversight of the 700 MHz Public/Private Partnership, in the *Second FNPRM* the Commission sought comment on how the Commission can better exercise oversight over the activities of both the Public Safety Broadband Licensee and its commercial partner. The Commission asked, for example, whether quarterly financial

[837] APCO Comments at 22.

[838] *See* APCO Comments at 22.

[839] *See Second Report and Order,* 22 FCC Rcd at 15422 para. 374; *Order on Reconsideration* 22 FCC Rcd at para. 4; Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Four At-Large Members of the Public Safety Broadband Licensee's Board of Directors, *Public Notice,* 22 FCC Rcd 19475 (PSHSB 2007).

[840] Current executive committee members may be elected to positions on the committee other than the ones they currently hold.

[841] See PSST Comments at 46; APCO Comments at 21.

[842] *See* PSST Reply Comments at 16; APCO Comments at 21; NATOA *et al.* Reply Comments at 7.

[843] Sensitive matters warranting closed board meetings would include, for example, matters involving proprietary or confidential information provided by vendors or outside parties for the board's consideration, and matters involving public safety or homeland security not normally made public.

reporting is adequate, or whether additional disclosures by the Public Safety Broadband Licensee or commercial partner would be necessary.[844] The Commission also asked what additional measures, if any, the Commission should take to ensure the appropriate level of oversight.[845] The Commission asked, for example, whether the Commission should require Commission approval of certain Public Safety Broadband Licensee activities, such as requiring Commission approval before the Public Safety Broadband Licensee could enter into contracts of a particular duration or cumulative dollar amount.[846] The Commission further asked whether the Commission should require or reserve the right to have Commission staff attend meetings of the voting board.[847] In addition to enhancing Commission oversight of the 700 MHz Public/Private Partnership, the Commission also sought comment on how the Commission can ensure an oversight role for Congress, both in the operations of the Public Safety Broadband Licensee and the 700 MHz Public/Private Partnership.[848] The Commission asked, for example, whether Congress should designate some of the Public Safety Broadband Licensee's board members.[849]

415. *Comments.* The PSST opposed ''requiring [it] to obtain prior FCC approval for certain decisions'' because this ''would cause delays that could undermine the PSST's ability to carry out its duties.'' [850] The PSST observed that it is already required to submit quarterly financial reporting to the Commission, and to ''the extent that the Commission believes that additional oversight is necessary, the PSST can provide additional reports to the FCC on its operational goals and actions.'' [851] The PSST stated that a ''monthly discussion, or more often if needed, with the appropriate persons at the FCC would be [an] effective means to provide the PSST with guidance and interpretation of FCC intent * * * particularly in the early years of its operation.'' [852] The PSST did, however, support a Commission official serving in an *ex officio* capacity on the PSBL board, and recommended that a Commissioner serve in that role.[853]

416. APCO, however, argued that ''the formal relationship between the Commission and the PSBL must be strengthened.'' [854] Accordingly, APCO indicated support for ''Commission oversight, quarterly financial reports, and periodic audits to ensure that the PSBL is operating in conformance with its public responsibilities and Commission rules,'' as well as having ''its records be open for public inspection.'' [855] APCO also indicated support for ''a Commission official serving in an *ex officio* capacity on the PSBL board.'' [856] Most other comments addressing the issue of Commission oversight of the PSBL's activities agreed that such oversight is necessary and important.[857] AASHTO, however, warned that ''[i]ncreasing the reporting activities of the PSBL will have a significant impact as the cost of providing reports and documentation would have to be recovered in additional fees paid by the network user.'' [858]

417. With respect to Congressional oversight, the PSST stated that it ''would welcome Congressional monitoring'' but noted that the need for rapid decision-making ''will of necessity limit the types of Congressional oversight that could be mandated.'' [859] Region 20 indicated reluctance to mandated Congressional oversight, however, noting that ''[t]he current provisions of the [Second Report and Order] allow for certain ''at-large'' appointments and if the PSST Board determines that Congressional participation is in the best interests of public safety communications, the Board should be free to reach out to members of the Congress as ''at large'' participants.'' [860]

418. *Discussion.* Given the proposed enhancements to the structure and functioning of the PSBL discussed elsewhere in this Third FNPRM, the Commission believes that the Commission has addressed the principal concerns regarding oversight of the PSBL. In addition to affirming and enhancing the PSBL's reporting requirements, the Commission is also proposing to require the submission of the PSBL's proposed annual budget to the Commission for review and approval. In this manner, the expected activities and operations of the PSBL can be monitored to ensure the PSBL is staying within its role as representative of the public safety community. Part and parcel with those reporting requirements, the Commission is proposing to require the PSBL to establish an audited annual budgeting process, conducted by an external, independent auditor, which will enhance the ability to oversee the activities and operations of the PSBL. Further, as discussed elsewhere in this Third FNPRM, the Commission has narrowed and clarified the mission and responsibilities of the PSBL. With respect to Congressional oversight, Congress maintains an oversight role over the Commission's decisions and thus the Commission sees no need for any extraordinary provisions that would presume to compel Congress into an oversight role it has not already defined for itself.

(iii) Role of State Governments

419. The Commission also sought comment in the *Second FNPRM* on whether providing a nationwide, interoperable broadband network might be more effectively and efficiently accomplished by allowing state governments (or other entities that have or plan interoperable networks for the benefit of public safety) to assume responsibility for coordinating the participation of the public safety providers in their jurisdictions.[861] To that end, the Commission asked parties supporting such action to comment on the proper relationship between the state governments and the Public Safety Broadband Licensee and on the Commission's authority to establish such a role for state governments.[862] The Commission asked, for example, whether the Public Safety Broadband Licensee should be authorized to choose

[844] *See Second FNPRM*, 23 FCC Rcd at 8068 para. 51.

[845] *See Second FNPRM*, 23 FCC Rcd at 8068 para. 51.

[846] *See Second FNPRM*, 23 FCC Rcd at 8068 para. 51.

[847] *See Second FNPRM*, 23 FCC Rcd at 8068 para. 51.

[848] *See Second FNPRM*, 23 FCC Rcd at 8066 para. 48.

[849] *See Second FNPRM*, 23 FCC Rcd at 8066 para. 48.

[850] PSST Comments at 46.

[851] PSST Comments at 47.

[852] PSST Comments at 48.

[853] PSST Comments at 48.

[847] *See Second FNPRM*, 23 FCC Rcd at 8068 para. 51.

[848] *See Second FNPRM*, 23 FCC Rcd at 8066 para. 48.

[849] *See Second FNPRM*, 23 FCC Rcd at 8066 para. 48.

[850] PSST Comments at 46.

[851] PSST Comments at 47.

[852] PSST Comments at 48.

[853] PSST Comments at 48.

[854] APCO Comments at 20.

[855] APCO Comments at 19.

[856] APCO Comments at 20, 24.

[857] *See* NPSTC Comments at 22 (Commission's ''oversight should be directed to ensure the PSBL's process results in the handling of relevant issues, the opportunity for debate, and the generation of sound and fair decisions''); Region 20 Reply Comments at 12 (''[a]t a minimum, the books and

[860] RPC 20 Reply Comments at 11–12. *See also* RPC 33 Comments at 7.

[861] *Second FNPRM*, 23 FCC Rcd at 8068 para. 52.

[862] *Second FNPRM*, 23 FCC Rcd at 8068 para. 52.

a minimum standard for any public safety broadband operation, with the state governments given the responsibility to work with public safety providers to implement operations in their jurisdictions.[863] The Commission further asked whether such an approach would allow state governments wanting higher-grade networks to implement separately these more-advanced systems, while allowing those wanting networks at the minimum standard to avoid what they may consider unnecessary expenses.[864] The Commission also asked whether state governments are better situated to address implementation challenges that cross public safety jurisdictions (*e.g.*, coordinating use by sheriffs departments in neighboring counties) as well as intra-jurisdictional challenges (*e.g.*, coordinating use by the police versus fire departments), or whether, in the event different jurisdictions chose different grades of networks, there would be a resulting lack of economies of scale and thus higher equipment costs for all public safety users.[865]

420. *Comments.* Commenters expressed mixed views on the issue of allowing states to coordinate the participation in the shared network by the public safety providers in their jurisdictions. ASSHTO, for example, suggested that while there might be benefits in having ''[s]tate governments [ ] assume responsibility for coordinating the participation of the public safety providers in their jurisdictions,'' the ''networks operated by states for users other than state agencies is voluntary and cannot be impelled.'' [866] Similarly, NRPC asserted that ''[s]tates should be utilized in the development of a nationwide public safety broadband network to the degree each state wants to assist and utilize its resources.'' [867] NRPC, however, also emphasized that the Commission should ''NOT impose any mandates on states to facilitate, administer or promote any element associated with a nationwide public safety broadband network.'' [868]

421. A number of commenters argued, however, that state and local participation in the development and management of the network would be essential. Region 33 stated that ''any 'system' without local oversight would be unmanageable.'' [869] Wireless RERC suggested that State Emergency Communications Committees and Local Emergency Communications Committees should offer guidance in the ''development of any strategic public safety migration plan.'' [870] Rivada asserted that ''[b]efore the Commission can responsibly move forward with a revised public/private partnership (or any other resolution of the D-Block and adjacent public safety spectrum) the interests of various public safety agencies at the State, local and Federal level will all need to be surveyed and resolved.'' [871]

422. *Discussion.* While the Commission appreciates the relationships that the states have with the public safety providers in their jurisdictions, the Commission does not believe it would be efficient or beneficial to carve out a specific role for the states in coordinating their public safety providers' participation in the interoperable shared broadband network. The Commission expects the Public Safety Broadband Licensee to work with all public safety interests, whether at local, Tribal, state or regional levels, to ensure that usage of the interoperable shared broadband network is coordinated to meet the needs of all eligible public safety users in the most efficient manner. Further, the Commission observes that participation on the Public Safety Broadband Licensee's Board by the National Governors Association already serves as a vehicle to ensure that states have direct input in the Public Safety Broadband Licensee's activities.

(iv) Reissuance of the Public Safety Broadband License and Selection Process

423. Finally, in light of the potential changes contemplated in the *Second FNPRM,* and the corresponding changes contemplated with respect to the D Block, the Commission sought comment on whether the Commission should rescind the current 700 MHz Public Safety Broadband License and seek new applicants.[872] In the event such action is warranted, the Commission asked whether the Commission should use the same procedures as before, *i.e.*, delegating authority to the Chief, Public Safety and Homeland Security Bureau to solicit applications, specifying any changed criteria that may be adopted following this *Third FNPRM,* and having the Commission select the licensee.[873] The Commission further asked whether there are other considerations that should be taken into account in selecting the licensee.[874] In addition, in light of the need to identify the licensee quickly to enable the effective development of the 700 MHz Public/Private Partnership, the Commission sought comment as to the mechanism the Commission should employ to assign the Public Safety Broadband License in the event that there was more than one qualified applicant.[875]

424. *Comments.* With respect to the issue of rescinding the current PSBL license and opening a new application round, the PSST asserted that ''the Commission should reject any suggestion [to rescind its license] and instead work with the organizations represented on the current PSST Board to address any major concerns about the organizational structure and governance of the organization rather than starting from scratch.''[876] The PSST also contended that ''it is our strong belief that the cost and delay in starting up another nonprofit, tax-exempt organization will result in irreparable damage to the substantial efforts of the public safety community to establish a new Public/Private Partnership and SWBN and creates a substantial risk that the entire effort to establish a new SWBN will fail.'' [877] The PSST noted that ''there were no other applicants during the initial window.'' [878] The PSST further argued that ''potential bidders on the D Block may be discouraged by the uncertainty that would be added to the process if interested parties have no idea who will be representing public safety interests going forward other applicants.'' [879] Finally, the PSST argued that ''the PSST and its individual Board members have already contributed enormous efforts to the establishment of the PSST and its related infrastructure [] and it would be wasteful to walk away from this substantial investment when funding and resources are so scarce.'' [880] Other

[863] *Second FNPRM*, 23 FCC Rcd at 8068 para. 52.

[864] *Second FNPRM*, 23 FCC Rcd at 8068 para. 52.

[865] *Second FNPRM*, 23 FCC Rcd at 8068 para. 52.

[866] AASHTO Comments at 11. *See also* NPSTC Comments at 22 (''[the] proposal to place in state governments the operating and policy responsibilities now committed to the PSBL lacks any credible indication that it will work.''); California Comments at 2 (California, ''no organization or entity has the legislated authority or funding necessary to assume the statewide responsibility'' for coordinating the participation of public safety providers in facilitating the interoperable network in its jurisdiction.).

[867] NRPC Comments at 9.

[868] NRPC Comments at 9.

[869] RPC 33 Comments at 8.

[870] Wireless RERC Comments at 6.

[871] Rivada Reply Comments at 4.

[872] *Second FNPRM,* 23 FCC Rcd at 8068 para. 53.

[873] *Second FNPRM,* 23 FCC Rcd at 8068 para. 53.

[874] *Second FNPRM,* 23 FCC Rcd at 8068 para. 53.

[875] *Second FNPRM,* 23 FCC Rcd at 8068 para. 53.

[876] PSST Comments at 47. *See also* PSST Reply Comments at 16.

[877] PSST Reply Comments at 16.

[878] PSST Reply Comments at 16.

[879] PSST Reply Comments at 16.

[880] PSST Reply Comments at 47–48.

commenters also urged the Commission to reject proposals that advocate rescinding the Public Safety Spectrum Trust's license.[881] APCO, however, asserted that, in order to implement its suggested modifications to the PSBL's structure, APCO is comfortable with either modification of the PSST's articles and bylaws, or rescission of ''the PSST's license'' and selection of ''a new PSBL.'' [882]

425. *Discussion.* As a threshold matter, the Commission tentatively concludes that the public safety broadband spectrum should continue to be licensed on a nationwide basis to a single Public Safety Broadband Licensee. However, the Commission seeks comment on whether the Commission should license the public safety broadband spectrum on a regional basis rather than a nationwide basis. Further, if the Commission were to license the public safety broadband spectrum on a regional basis, the Commission seeks comment on the procedures and selection criteria for assigning such licenses, and how multiple public safety broadband licensees would be able to ensure a nationwide level of interoperability and otherwise satisfy the roles and responsibilities of the public safety broadband licensee the Commission discusses elsewhere. Assuming that the Commission adopts its tentative conclusion to retain the nationwide Public Safety Broadband Licensee, the Commission also tentatively concludes that is unnecessary to rescind the PSST's license and reissue the license to a new licensee in order to implement the foregoing changes to the PSBL. Pursuant to section 316(a)(1) of the Act, the Commission has the authority to modify ''[a]ny station license * * * if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provision of this Act.'' [883] For all of the reasons set forth in the preceding discussion, it is the Commission's judgment that the tentative changes that the Commission proposes to the PSBL will promote the public interest, convenience, and necessity, as well as the provisions of the Act. Accordingly, except as otherwise noted above, the Commission expects the PSST to implement the tentative proposals specific to its structure and internal procedures that the Commission has set forth in this Third FNPRM, within 90 days of publication of the relevant final rules in the **Federal Register**.

3. Narrowband Relocation

426. *Background.* In designating the lower half of the 700 MHz Public Safety band (763–768/793–798 MHz) for broadband communications, the *Second Report and Order* consolidated existing narrowband allocations to the upper half of the 700 MHz Public Safety band (769–775/799–805 MHz).[884] To effectuate this consolidation of the narrowband channels, the Commission required the D Block licensee to pay the costs of relocating existing narrowband radios from TV channels 63 and 68 (at 764–767 MHz and 794–797 MHz), and the upper one megahertz of channels 64 and 69 (at 775–776 MHz and 805–806 MHz), and capped the disbursement amount for relocation costs at $10 million.[885] The Commission also cautioned that any narrowband equipment deployed in channels 63 and 68, or in the upper one megahertz of channels 64 and 69, more than 30 days following the adoption date of the *Second Report and Order—i.e.,* after August 30, 2007—would be ineligible for relocation funding.[886] In addition, the Commission prohibited authorization of any new narrowband operations in that spectrum, as of 30 days following the adoption date of the *Second Report and Order* (*i.e.*, as of August 30, 2007).[887]

427. In the *Second Report and Order,* the Commission further found that, in order to maximize the benefits of the 700 MHz nationwide, interoperable broadband communications network, 700 MHz narrowband public safety operations then existing under the old narrowband band plan needed to be consolidated and cleared no later than the DTV transition date (*i.e.*, February 17, 2009).[888] The Commission required every public safety licensee impacted by the consolidation to file a certification with the Commission no later than 30 days from the effective date of the *Second Report and Order,* including certain information to account for ''pre-programmed narrowband radios that public safety agencies may have already taken delivery as of the adoption date of [the *Second Report and Order*] and intend to immediately place into operation.'' [889] The Commission emphasized that such information was ''integral to the success of the relocation process,'' and cautioned public safety entities that failing to file this information in a timely manner would result in forfeiture of reimbursement.[890] As ''an additional measure to define and contain the costs that would be entitled to reimbursement,'' the Commission prohibited any new authorizations outside of the consolidated narrowband segment, stating that such a prohibition would ''ensure that the relocation proceeds in an orderly manner and without complications stemming from additional operations being deployed in spectrum being reallocated.'' [891] Moreover, as ''an additional means to ensure the integrity of the relocation process,'' the Commission imposed a $10 million cap based on the best evidence available in the record at the time of the *Second Report and Order.*[892]

428. Two parties filed petitions seeking reconsideration of some or all of the foregoing requirements in the *Second Report and Order.*[893] Among other things, these parties challenged the adequacy of the $10 million cap on relocation expenses.[894] A number of other parties also supported revising or eliminating the relocation cap.[895]

429. One petitioner also asked that the Commission make clear that parties who purchased and began to deploy systems before the August 30, 2007, cut-off date can continue to deploy those systems after August 30, and obtain full reimbursement for the relocation of all such systems.[896] Another party asked the Commission to modify the *Second Report and Order* to permit continued authorization and deployment of statewide radio public safety systems that were in the process of construction and implementation as of the date of the *Second Report and Order* in channels 63 and 68 and the upper one megahertz of channels 64 and 69 through January

[881] *See, e.g.,* ComCentric Comments at 3; WFCA Comments at 1; Oregon Comments at 1; IMSA Comments at 11; NAEMT Comments at 3; NPSTC Reply Comments at 6; NASEMSO Reply Comments at 2; Nextwave Reply Comments at 5; RPC 20 Reply Comments at 11; ICMA Reply Comments at 2.

[882] APCO Comments at 24–25.

[883] 47 U.S.C 316(a)(1).

[884] *Second Report and Order,* 22 FCC Rcd at 15406 para. 322.

[885] *Second Report and Order,* 22 FCC Rcd at 15412 para. 341.

[886] *Second Report and Order,* 22 FCC Rcd at 15412 para. 339.

[887] *Second Report and Order,* 22 FCC Rcd at 15412 para. 339.

[888] *Second Report and Order,* 22 FCC Rcd at 15406 para. 322.

[889] *Second Report and Order,* 22 FCC Rcd at 15411 para. 336.

[890] *Second Report and Order,* 22 FCC Rcd at 15411 para. 337.

[891] *Second Report and Order,* 22 FCC Rcd at 15412 para. 339.

[892] *Second Report and Order,* 22 FCC Rcd at 15412 para. 341.

[893] *See* Virginia Petition for Reconsideration; Pierce Transit Petition for Reconsideration.

[894] *See* Virginia Petition for Reconsideration; Pierce Transit Petition for Reconsideration.

[895] *See* National Association of Telecommunications Officers and Advisors (NATOA) Comments at 9–11; State of Nebraska (Nebraska) Opposition at 2; Motorola Comments at 1–7.

[896] *See generally* Pierce Transit Petition for Reconsideration.

31, 2009; allow the owner of any such statewide radio public safety system to obtain reimbursement for all of its costs incurred in the installation of such system; and reconsider the $10 million cap on rebanding costs.[897]

430. In the *Second FNPRM,* mindful of the desire to provide certainty to potential bidders as to the relocation obligation that would attach to the winner of the D Block spectrum, the Commission sought comment on whether the Commission should revise or eliminate the $10 million cap on relocation expenses.[898] The Commission asked parties to provide specific data and cost estimates regarding relocation expenses, particularly taking into account the certifications filed in the docket pursuant to the *Second Report and Order.*[899]

431. Given the proposed re-auction of the D Block and associated timing, the Commission also sought comment on the date by which such relocation must be completed. In particular, the Commission asked whether the Commission should continue to require that relocation be completed by the DTV transition date or set an alternative date, and if so, what such alternate date should be.[900] The Commission also asked whether the Commission should allow relocation to occur on a rolling basis, such that the D Block licensee would be required to relocate narrowband operations only as the broadband network is built out in a particular market and, if so, how much notice the D Block licensee should be required to give to a narrowband licensee in advance of relocation.[901] The Commission further sought comment on any other viable mechanism for facilitating relocation, and the appropriate timing of such an approach.[902] The Commission also asked whether the Commission should retain the requirement that capped costs be deposited in a trust account to be administered by the Public Safety Broadband Licensee or, if the Commission were to eliminate the cap, how the trust mechanism would function.[903] With respect to management of the reimbursement process, the Commission asked whether the Commission should continue to require that the Public Safety Broadband Licensee manage the reimbursement process for the narrowband licensees.[904] In the event that maintaining such requirement is appropriate, the Commission sought comment on whether the Commission should require that public safety entities seeking reimbursement provide detailed cost information to the Public Safety Broadband Licensee, what such cost information should entail, and whether the Public Safety Broadband Licensee should be afforded discretion in assessing the soundness of the cost estimates.[905] The Commission also asked whether the Public Safety Broadband Licensee can leverage its status as a nationwide license holder to negotiate terms with equipment and technology vendors to relocate multiple narrowband operations, and thus achieve economies of scale.[906] The Commission further asked whether the Public Safety Broadband Licensee should have recourse to the Commission if it determines the cost estimates provided by individual public safety entities, including those passed through by technology or equipment vendors, are unreasonable.[907]

432. With respect to the August 30, 2007 cut-off date established in the *Second Report and Order* for narrowband deployments outside of the consolidated narrowband spectrum, the Commission sought comment on whether extension of that deadline is inappropriate, and any other issue related to the reconsideration petitions filed by Virginia and Pierce Transit.[908] The Commission received a number of comments addressing the various issues associated with the narrowband relocation, as detailed below.

(i) February 17, 2009, Relocation Deadline

433. *Comments.* With respect to the deadline for relocating narrowband operations that were in place prior to August 30, 2007, several commenters agree that the Commission should extend the February 17, 2009, deadline for such action adopted in the *Second Report and Order.*[909] The PSST, for example, stated that, ''[s]ince the date for the D-Block re-auction has not yet been set, and since the successful auction will be followed by the NSA negotiation process, it does not seem realistic for the FCC to retain the February 17, 2009 completion date.'' [910] The PSST recommended instead that the narrowband relocation deadline be set ''twelve months after funding from the D Block winner becomes available.'' [911]

434. Motorola agreed with the PSST that ''a new deadline for relocation be established twelve months after funding from the D Block winner becomes available.'' [912] Motorola further asserted that such revised deadline would ''provide[ ] a more realistic time frame to effectuate relocation than the Commission's previously adopted policies.'' [913] AASHTO argued that ''the relocation of existing narrowband users should be grandfathered until there are funding mechanisms in place to reimburse the public safety agencies for the costs involved in returning or replacing equipment incapable of being returned.'' [914] AASHTO also supported using ''rolling dates for the relocation of existing users coupled with the availability of the network in their area.'' [915]

435. *Discussion.* As indicated above, in the *Second Report and Order* the Commission required narrowband operations that had already been deployed under the prior 700 MHz band plan on channels 63 and 68, and the upper one megahertz of channels 64 and 69, to be relocated to and consolidated within the new narrowband channels (at 769–775 MHz/799–805 MHz) by the DTV transition deadline of February 17, 2009.[916] Implicit in the Commission's decision to adopt February 17, 2009, as the relocation deadline were the assumptions that Auction 73 would yield a national D Block licensee and that the NSA would be successfully negotiated and approved with sufficient time to effect the narrowband relocations prior to February 17, 2009—the deadline by which the public safety broadband frequency bands must be vacated by current analog television operations. Those assumptions did not

[897] *See generally* Virginia Petition for Reconsideration.

[898] *See Second FNPRM,* 23 FCC Rcd at 8111 para. 180.

[899] *See Second FNPRM,* 23 FCC Rcd at 8111 para. 180.

[900] *See Second FNPRM,* 23 FCC Rcd at 8111 para. 181.

[901] *See Second FNPRM,* 23 FCC Rcd at 8111 para. 181.

[902] *See Second FNPRM,* 23 FCC Rcd at 8111 para. 181.

[903] *See Second FNPRM,* 23 FCC Rcd at 8111 para. 181.

[904] *See Second FNPRM,* 23 FCC Rcd at 8111 para. 181.

[905] *See Second FNPRM,* 23 FCC Rcd at 8111 para. 181.

[906] *See Second FNPRM,* 23 FCC Rcd at 8111 para. 181.

[907] *See Second FNPRM,* 23 FCC Rcd at 8111 para. 181.

[908] *See Second FNPRM,* 23 FCC Rcd at 8111 para. 182.

[909] *See, e.g.*, Ada County Sherriff's Office Comments at 1; APCO Comments at 39; NRPC Comments at 7; NPSTC Comments at 23; Motorola Comments at 21; Louisiana Comments at 2; TeleCommUnity Comments at 7; Eads Comments at 4; Lencioni Comments at 1.

[910] PSST Comments at 51–52.

[911] PSST Comments at 52.

[912] Motorola Reply Comments at 6.

[913] Motorola Reply Comments at 6.

[914] AASHTO Comments at 13.

[915] AASHTO Comments at 13.

[916] *Second Report and Order,* 22 FCC Rcd at 15410 para. 332.

materialize and, therefore, an extension of the current February 17, 2009, deadline for completing the relocation of all narrowband operations to the consolidated narrowband channels appears warranted.

436. In determining a new narrowband relocation deadline, the Commission continues to believe that a uniform deadline is required to allow both the D Block licensee and the public safety community to concentrate on deploying a shared network in the 700 MHz public safety broadband spectrum, unconstrained by the presence of narrowband operations. While the Commission understands that the shared broadband network will be constructed over time, and may reach some areas of the country sooner than others, the Commission believes that tying narrowband relocations to actual or planned buildout of the network on a rolling or otherwise piecemeal basis would be impractical and inefficient, and could cause delays in network deployment. The Commission agrees with the PSST that a single relocation deadline tied to the availability of funding is the most prudent course.[917] Accordingly, the Commission proposes to extend the narrowband relocation deadline to twelve months from the date upon which narrowband relocation funding is made available by the D Block licensee(s), which as explained below, will be no later than the date upon which the executed NSA(s) is submitted to the Commission for approval.

(ii) $10 Million Cap

437. *Comments.* As to the $10 million cap on narrowband relocation cost reimbursement, several commenters argued that the $10 million cap is inadequate.[918] The PSST, for example, recommended that that the Commission ''replace the current $10 Million cap on the D Block licensee's reimbursement obligation with a cap of $75 Million.'' [919] According to the PSST, ''the current cap substantially underestimates the funds needed to address this situation based on [ ] extensive work with the affected public safety agencies, equipment vendors and with organizations such as the NPSTC that have committed time and resources toward identifying a cost-effective solution.'' [920] The PSST also observed that ''it has been determined that the original cost estimate failed to include one critical equipment category: the vehicular repeater,'' the retuning of which ''will significantly increase the total relocation cost.'' [921] The PSST further asserted that its proposed $75 million cap ''is but a fraction of the anticipated cost of purchasing the spectrum at auction and deploying and operating the SWBN [and] not an amount that should deter an otherwise interested D Block bidder.'' [922]

438. The Ada County Sheriff's Office argued that, ''the $10M cap * * * is far too low for the actual cost of relocating users to the new band.'' [923] According to Ada County Sheriff's Office, relocation funding should instead be ''based upon actual relocating costs for each agency affected.'' [924] The Commonwealth of Virginia argued that ''no 'cap' on public safety relocation is appropriate given the very substantial proceeds which will be realized from this D Block auction * * * the commercial users should pay the full relocation costs of the public safety entities, who generally lack budget flexibility or surplus funding to allow them to absorb these costs.'' [925]

439. Pierce Transit argued that ''the Commission to this day has no information on which it can rely with any reasonable degree of confidence, as to what the incumbent public safety licensees' aggregate relocation costs will be,'' and ''imposing the $10 million cap, without having any concrete, verifiable information on the true cost of reconfiguring incumbent operations, raises the specter that the dozens of affected public organizations may be subject to either pro rata or first come, first serve reimbursements that cannot hope to fully compensate affected entities for their full relocation costs.'' [926]

440. Motorola observed that ''[t]he costs of relocation vary widely,'' and thus ''[a] complete and accurate estimate of relocation costs can only be created by soliciting information directly from individual public safety agencies as relocation costs will vary by equipment and agency.'' [927] Motorola further argued that in order to collect this information, ''the FCC should require public safety agencies seeking reimbursement to provide detailed cost information to the PSBL or the FCC directly within 90 days from the date of a Commission Public Notice that would start this process.'' [928]

441. The National Association of Telecommunications Officers and Advisors *et al.* asserted that ''[t]he cost of relocation must be borne by the D Block licensee, and the timing for accomplishing this task must be more attuned to the timing under which the D Block licensee will be able to make use of the spectrum.'' [929]

442. *Discussion.* The Commission agrees with the majority of commenters who suggested that the $10 million cap on narrowband relocation costs to be reimbursed by the D Block licensee may be inadequate to fully reimburse public safety entities for the likely costs of relocation. The Commission adopted the $10 million cap in the *Second Report and Order* based upon the record received in response to the preceding *700 MHz FNPRM*, which sought information regarding both the number of narrowband radios deployed and in use, and the costs involved in consolidating the narrowband channels.[930] The Commission received no information regarding the costs of funding relocation except for a response from Motorola, in which it estimated 750,000–800,000 radios currently deployed and a relocation cost of approximately $10 million.[931]

443. Since the Commission adopted the *Second Report and Order,* the Commission has received and reviewed additional information on the number and types of equipment deployed in the 700 MHz band, in the form of the certifications from public safety licensees regarding the number of handsets, base stations and repeaters that they had in operation as of August 30, 2007.[932] The Commonwealth of

[917] *See* PSST Comments at 52. *See also* Motorola Reply Comments at 6; NPSTC Comments at 24.

[918] *See, e.g.*, Louisiana Comments at 2; APCO Comments at 39; Pierce Transit Comments at 5; NATOA *et al* Comments at 16; Virginia Comments at 5; NPSTC Comments at 24; Eads Comments at 3; Lencioni Comments at 1; RPC 33 Comments at 20; RPC 20 Reply Comments at 11.

[919] PSST Comments at 53.

[920] PSST Comments at 53. *See also,* Motorola Reply Comments at 5.

[921] PSST Comments at 53.

[922] PSST Comments at 53.

[923] Ada County Sheriff's Office Comments at 1.

[924] Ada County Sheriff's Office Comments at 1.

[925] Commonwealth of Virginia Comments at 5–6.

[926] Pierce Transit Comments at 5–6.

[927] Motorola Comments at 19. Motorola asserted in its Reply Comments that its initial estimate on narrowband relocation costs ''did not include any management costs or other costs that licensees and the parties actually performing the reconfiguration may determine are appropriate and reasonable.'' Motorola Reply Comments at 5.

[928] Motorola Comments at 19.

[929] NATOA *et al.* Reply Comments at 9.

[930] Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket Nos. 06–150, 01–309, 03–264, 06–169, 96–86, CC Docket No. 94–102, PS Docket No. 06–229, *Report and Order and Further Notice of Proposed Rulemaking,* 22 FCC Rcd 8064, 8159 para. 264 (2007) (*700 MHz Further Notice*).

[931] *See Second Report and Order,* 22 FCC Rcd at 15410 para. 333.

[932] *See Second Report and Order,* 22 FCC Rcd at 15411 paras. 336, 337; Public Safety and Homeland Security Bureau Announces an October 23, 2007

Virginia estimates its costs of relocation at $48 to $100 per handset, $1,000 per repeater unit, and $3,000 per base station.[933] Similarly, Motorola estimates the cost of relocation for a mobile/portable unit would be $100, and the cost for a base transmitter site would be $3,000.[934] These costs also are consistent with the Commission's experience with rebanding efforts in the 800 MHz band. Based on the Commission's review of the certifications filed, and using the maximum per-unit estimates suggested by the Commonwealth of Virginia, the Commission calculates the cost of relocating equipment that public safety licensees have certified as being in operation by August 30, 2007, at approximately $23.6 million.[935] This figure also assumes that every handset and transmitter in operation as of the cut-off date would require relocation reimbursement. Moreover, while not all of the entities that have sought waivers of the August 30, 2007, cut-off for new narrowband deployments outside the consolidated channels have sought reimbursement for the costs of relocating such equipment, the Commission notes that even if the Commission assumed full reimbursement for each waiver requested, taking such action would add approximately $3 million to the Commission's revised $23.6 million relocation cost estimate.[936] Thus, including both the equipment certified as eligible for reimbursement under the *Second Report and Order* and equipment permitted to be deployed after the August 30, 2007, cut-off date pursuant to a waiver, total reimbursement liability for the D Block licensee(s) would stand at approximately $26.6 million.[937]

444. In light of the foregoing, the Commission tentatively proposes to cap the narrowband relocation reimbursement costs for which the D Block licensee(s) would be obligated to pay at $27 million.[938] The Commission emphasizes that, based upon the entire record before us, this figure should be more than sufficient to ensure that all public safety entities are fully reimbursed their costs for relocating their narrowband systems to the consolidated narrowband channels. This figure includes generous assumptions, using maximum per unit costs and assuming every handset, base station and vehicle repeater, including those that are the subject of waiver requests, would require relocation reimbursement. To account for the possibility that the D Block auction could result in the issuance of regional licenses to more than one regional licensee, the Commission proposes setting individual caps for each RPC region based upon the certification and waiver request data before us, with the aggregate cap remaining at $27 million. The proposed break-down for the cap for each region is set forth in Appendix C to this Third FNPRM.[939] The Commission proposes that each regional D Block licensee would be responsible for paying the cost of narrowband relocation within its region(s). In the event that one or more D Block regional licenses remains unsold, the Commission proposes that the cost of relocating 700 MHz narrowband facilities in such region(s) would be prorated among the remaining D Block licensees.

(iii) August 30, 2007 Cut-off Date

445. *Comments.* With respect to the August 30, 2007, cut-off date for narrowband deployments outside of the consolidated narrowband spectrum, several commenters proposed that the cut-off date should be extended.[940] The Commonwealth of Virginia, for example, asserted that, ''any absolute August 30, 2007 cutoff date was inappropriate for systems which had already entered into contractual commitments for system deployment as of the date of the Second Report and Order * * * any August 30, 2007 date must apply both to equipment installed as of that date, and contracted for as of that date.'' [941] Tyco suggested that ''the Commission leniently grant 'case-by-case' waivers for narrowband deployments to ensure the proper function of mission-critical communication systems.'' [942] According to Tyco, ''[s]uch time extensions, coupled with the increased funding, will help to avoid undue burdens on existing public safety users.'' [943]

446. The PSST, however, argued that the Commission should ''maintain the August 30, 2007 deadline for equipment whose relocation costs will be reimbursable.'' [944] The PSST asserted that it ''is well aware of the difficulties this presents for certain licensees, but [] sees no reasonable alternative that would not seriously undermine the deployment of the SWBN in a timely fashion.'' [945] The Region 33 (Ohio) 700 MHz Regional Planning Committee agreed that the date should not be changed, stating, ''[t]hat was about 10 months ago and agencies have had to make adjustments in their rollout of the affected frequencies. To ask them to change the plan again would be doing them a disservice.'' [946]

447. The Virginia Information Technologies Agency (''VITA'') favored an approach ''that allows for both a post August 30, 2007 deployment strategy and a process that allows for those units deployed after the August 30, 2007 deployment date to have access to additional relocation funding opportunities to move them to the consolidated band plan in a uniform

Deadline for Filing 700 MHz Relocation Certification Information, PS Docket No. 06–229, WT Docket No. 96–86, *Public Notice* (PSHSB 2007).

[933] Virginia Petition for Reconsideration at 10. Virginia suggests that the Commission reopen the record for more information on costs. *Id.* at 11. As the Commission has explained, parties have already had ample notice and opportunity to submit cost information into the record in this proceeding, including a call again for such information in the *Second FNPRM. See Second FNPRM,* 23 FCC Rcd at 8111 para. 180. Moreover, in light of the information received through the certification process, the Commission finds there is no need to reopen this issue.

[934] Motorola June 2007 *Ex Parte* at 2–3.

[935] The Commission review of these certifications has identified approximately: 100,658 mobiles, 6,511 vehicular repeaters, 3,180 control stations, and 1,170 base stations.

[936] This $3 million figure represents the aggregate costs that would apply to relocate the subject waiver narrowband equipment that was contracted, paid for and received to be deployed in the non-consolidated narrowband channels (*i.e.*, in the 764–767/775–776 MHz and 794–797/805–806 MHz frequency bands) prior to the August 10, 2007, release date of the *Second Report and Order* only. In the Commission *Virginia Waiver Order,* the Commission determined that ''[i]t is in the public interest, therefore, to provide interim waiver relief for continued deployment outside of the consolidated narrowband channels where there has been a showing of potential public harm and there is evidence of a comprehensive 700 MHz deployment plan that predates August 30, 2007 for which equipment has been received and/or deployed.'' Request for Waiver of Commonwealth of Virginia, PS Docket No. 06–229, WT Docket No. 96–86, Order, at para. 7.

[937] To be clear, this amount represents the aggregate hard costs directly associated with modifications necessary to implement the relocation of base stations, mobiles and portables, and not for any unrelated improvements.

[938] The Commission observe that there is no substantiation in the record for the PSST's proposed reimbursement cap of $75 million.

[939] In instances where a state narrowband system operates in more than one RPC region, the Commission proposes that the state provide the PSBL with data concerning the location of its narrowband equipment so that the PSBL can apportion the total reimbursement amount to be paid by the respective D Block licensee for each region.

[940] *See, e.g.,* Louisiana Comments at 2; Pierce Transit Comments at 6; Motorola Comments at 21; TeleCommUnity Comments at 6; Eads Comments at 4.

[941] Virginia Comments at 10. *See also* Motorola Reply Comments at 7.

[942] TE M/A–COM Comments at 9.

[943] TE M/A–COM Comments at 9.

[944] PSST Comments at 52.

[945] PSST Comments at 52.

[946] RPC 33 Comments at 20.

manner.'' [947] According to VITA, such approach would result in ''a congruent process that allows for uniform deployment, band relocation and relocation funding.'' [948]

448. *Discussion.* As indicated, in the *Second Report and Order,* the Commission prohibited new narrowband operations outside of the consolidated narrowband blocks as of 30 days following the adoption date of the *Second Report and Order—i.e.*, as of August 30, 2007.[949] The Commission further required every public safety licensee impacted by such consolidation to file a certification with the Commission identifying narrowband deployment information to account for pre-programmed narrowband radios that public safety agencies may have already taken delivery as of the adoption date of the *Second Report and Order* and which they intended to immediately place into operation.[950] The Commission emphasized that such information was ''integral to the success of the relocation process,'' and cautioned public safety entities that failing to file this information in a timely manner would result in forfeiture of reimbursement.[951] The primary purposes behind the adoption of this cut-off date and associated certification requirements were to clearly define and contain the costs that would be entitled to reimbursement, and to ensure that the relocation of narrowband operations would proceed in an orderly manner and without complications stemming from additional operations being deployed in spectrum being reallocated for broadband use.[952] The Commission made clear that public safety entities could place into operation narrowband equipment in the consolidated narrowband blocks 769–775 and 799–805 MHz.[953]

449. As advocated by the PSST and others,[954] the Commission tentatively concludes that the existing August 30, 2007, cut-off date should not be changed. The underlying necessities of adopting this date—containing relocation costs, encouraging narrowband deployment in the consolidated narrowband channels and, more generally, carrying out a swift and thorough narrowband relocation process in order to quickly and efficiently establish the nationwide, interoperable public safety broadband network—have not changed since its adoption in the *Second Report and Order.* The Commission appreciates the Commonwealth of Virginia's arguments that the August 30, 2007, cut-off date may have been inappropriate in cases where entities already entered into contractual commitments for systems prior to the adoption of the *Second Report and Order.*[955] However, based upon the petitions seeking waiver of this cut-off date that the Commission has received thus far, it appears that relatively few entities fall into this category and the Commission believes such individualized determinations are best made on a case-by-case basis through the waiver process.[956]

450. The Commission recognizes, however, that while the waiver process has thus far provided continuing operating authority beyond the August 30, 2007, cut-off deadline for equipment contracted for prior to the adoption of the *Second Report and Order,* a decision as to whether costs for relocating equipment deployed after this date could be reimbursed was deferred until the outcome of this proceeding.[957] Accordingly, the Commission tentatively concludes that for those parties granted waiver relief to date, and seeking reimbursement for relocating equipment deployed pursuant to such waiver, the costs for relocating such equipment will be eligible for reimbursement by the D Block licensee. In this regard, the Commission would delegate authority to the PSHSB to grant such relief. The Commission also tentatively concludes that the PSHSB, acting under delegated authority, may grant similar relief with respect to pending waiver requests, so long as the request meets the criteria the Commission has established for granting waiver authority to deploy narrowband systems after the August 30, 2007 cut-off date—*i.e.*, where there has been a showing of potential public harm and there is evidence of a comprehensive 700 MHz deployment plan that predates August 30, 2007, for which equipment has been received and/or deployed. As observed above, the Commission calculates that the total cost of relocating such equipment is approximately $3 million, and thus there would be sufficient funding available for waiver applicants meeting these criteria. The Commission also tentatively concludes that, as of the release date of this *Third FNPRM,* the Commission will not accept any new waiver requests to deploy narrowband equipment outside of the consolidated narrowband blocks, or amendments to pending waiver requests that would increase the number of narrowband radios that would require relocation reimbursement. The Commission proposes taking this action in the interests of ensuring certainty with respect to the total relocation costs and in recognition of the fact that any parties requesting relief would already have submitted waiver requests.

(iv) Funding Mechanism

451. *Comments.* Most commenters addressing the issue of how the narrowband relocation funding should be processed agreed that the source of such funding should be the D Block licensee and the administration of such funding should be handled by the Public Safety Broadband Licensee. Motorola, for example, asserted that, ''if the Commission proceeds with a Public/Private Partnership, once the D-Block is successfully auctioned and appropriate Network Sharing Agreements are executed, the D-Block licensee(s) should be required to deposit the reimbursement funds into a trust fund administered by the PSBL.'' [958]

452. The State of Louisiana suggested ''a process in which Louisiana and other public safety agencies impacted by the 700 MHz narrowband reconfiguration can develop and provide actual cost estimates for the equipment that we have already deployed, and that now needs to be relocated per the new narrowband plan.'' [959] Additionally, the State of Louisiana favored making the PSST ''the central clearing point for gathering these cost estimates from all affected public safety agencies.'' [960]

453. APCO asserted that ''the Commission should retain the requirement that the D Block licensee pay the cost of relocating narrowband licensees,'' because ''regardless of any public/private partnership, the D Block

[947] VITA Comments at 5.

[948] VITA Comments at 5.

[949] *Second Report and Order,* 22 FCC Rcd at 15406, 15412 para. 339.

[950] *Second Report and Order,* 22 FCC Rcd at 15406, 15411 para. 336.

[951] *Second Report and Order,* 22 FCC Rcd at 15406, 15411 para. 337.

[952] *Second Report and Order,* 22 FCC Rcd at 15406, 15412 para. 339.

[953] *Second Report and Order,* 22 FCC Rcd at 15406, 15412 para. 339.

[954] *See* PSST Comments at 52; RPC 33 Comments at 20.

[955] *See* Virginia Comments at 10.

[956] In establishing the prohibition on new narrowband operations after August 30, 2007, it was not the Commission's intention to create hardship or delay systems needed to protect the safety of life and property, and the Commission has provided interim waiver relief to various public safety entities for continued deployment outside of the consolidated narrowband channels where there has been a showing of potential public harm and there is evidence of a comprehensive 700 MHz deployment plan that predates August 30, 2007 for which equipment has been received and/or deployed. *See Virginia Waiver Order* at para. 7.

[957] *See, e.g., Virginia Waiver Order* at para. 8.

[958] Motorola Comments at 20.

[959] Louisiana Comments at 2.

[960] Louisiana Comments at 2.

licensee will benefit from the reconfiguration of the 700 MHz band as it eliminates a potential interference problem.'' [961] APCO further stated, however, that the ''Commission should consider relieving the PSBL of the responsibility of managing the relocation funding,'' because ''it adds a function unrelated to the PSBL's core activity, and deepens its reliance on outside contractors for which it lacks the funds to support.'' [962] APCO contended that ''the Commission should [instead] appoint a third party (as it did with the 800 MHz Transition Administrator) or require the D Block licensee to retain the services of an entity that will manage the process.'' [963] NPSTC opposed APCO's position on removing the PSBL from responsibility for overseeing narrowband relocations, asserting that such action would be a ''set back to an important facet of the Commission's decision to realign the 700 MHz spectrum and create a public private partnership to deploy and manage a nationwide broadband network.'' [964] NPSTC further argued that ''[t]he PSBL's work with regard to the relocation of 700 MHz narrowband incumbents demonstrates tangibly not only its dedication to the Commission's decisions but its ability to work with the often competing interests.'' [965]

454. *Discussion.* In the *Second Report and Order,* the Commission required that the Upper 700 MHz Band D Block licensee pay the costs associated with relocating public safety narrowband operations, in recognition of the significant benefits that will accrue to the D Block licensee.[966] These fundamental benefits would not change under the 700 MHz Public/Private Partnership construct the Commission is tentatively proposing here—whether such partnership is implemented on a regional or nationwide basis. Further, bidders for the D Block licenses will be able to factor the prospective cost of narrowband relocation into their auction bids. Accordingly, the Commission tentatively concludes that the Commission will retain the requirement that the Upper 700 MHz Band D Block nationwide licensee, or regional licensees, as determined by the auction, must pay the costs associated with relocating public safety narrowband operations to the consolidated narrowband channels.

455. In terms of funding mechanics, the Commission also continues to believe that the Public Safety Broadband Licensee is best suited to administer the relocation process consistent with the requirements and deadlines set forth herein.[967] The Public Safety Broadband Licensee is composed of board members with significant experience and expertise involved with assuming this role and in fact already has demonstrated efforts working on the narrowband relocation issues.[968]

456. The Commission reiterates that under the Commission's proposal the D Block licensee(s') reimbursement obligation will be limited to the minimum ''hard'' costs directly associated with modifications necessary to implement the relocation of base stations, mobiles and portables, and will not extend to any ''soft'' costs, such as person-hours expended in effecting such modifications, or costs associated with unrelated improvements.[969] The Commission also will not permit such funding to cover costs associated with any modifications that may be necessary to the Computer Assisted Pre-Coordination Resource and Database (CAPRAD) system or other programs used by Regional Planning Committees to assign channels, or to any costs associated with amendments to regional plans or narrowband licenses.[970]

457. The Commission understands that the Public Safety Broadband Licensee will incur administrative costs in administering the relocation process. In this respect, the PSBL may recover such costs along with its other administrative and operating costs through the D Block licensee(s) funding mechanisms described elsewhere in this *Third FNPRM*.

458. The Commission also proposes to retain the narrowband relocation implementation process developed in the *Second Report and Order*, with conforming provisions to address the possibility of regional licensing. Under this approach, the Commission will require the winning bidder(s) for the D Block license(s) and the Public Safety Broadband Licensee jointly to submit for Commission approval a narrowband relocation plan(s) within 30 days following the NSA Negotiation Commencement Date.[971] If the D Block is licensed on a regional basis, the Public Safety Broadband Licensee and regional D Block license winners would jointly submit for Commission approval separate narrowband relocation plans covering each region within 30 days following the NSA Negotiation Commencement Date. If the D Block is licensed on a regional basis, but not all regional licenses are sold at auction, the Public Safety Broadband Licensee will be solely responsible for submitting a separate narrowband relocation plan covering each unsold region for Commission approval within 30 days following the NSA Negotiation Commencement Date. The nationwide narrowband relocation plan, or regional narrowband relocation plans, as applicable, would address the process and schedule for accomplishing narrowband relocation, including identification of the 700 MHz equipment vendor(s), the make and model numbers of the equipment to be relocated and the relocation cost estimates provided by such vendor(s) (on that vendor's letterhead), identification of equipment vendors or other consultants that would perform the necessary technical changes to handsets, vehicle repeaters, and base stations, and a detailed schedule for completion of the relocation process for every radio and base station identified in the certifications the Commission has previously required and for narrowband equipment operating under previously granted waivers.[972] The plan(s) also would specify the total costs to be incurred for the complete relocation process.[973]

459. If the D Block auction results in a single nationwide D Block license winner, that party would be required, no later than the date upon which the executed NSA is submitted to the Commission, to deposit the total cost amount identified in the narrowband relocation plan, as approved by the Chief of the Public Safety and Homeland Security Bureau, into a trust account established by the Public Safety Broadband Licensee, to finance the narrowband relocation.[974] If the D Block

[961] APCO Comments at 39.

[962] APCO Comments at 39.

[963] APCO Comments at 39.

[964] NPSTC Reply Comments at 15.

[965] NPSTC Reply Comments at 15.

[966] *Second Report and Order,* 22 FCC Rcd at 15336 para. 120, 15411 para. 336.

[967] *Second Report and Order,* 22 FCC Rcd at 15413–414, 15426–427 paras. 343–44, 383.

[968] *See, e.g.*, PSST Comments at 53.

[969] *Second Report and Order,* 22 FCC Rcd at 15411 para. 338.

[970] *Second Report and Order,* 22 FCC Rcd at 15411 para. 338.

[971] *Second Report and Order,* 22 FCC Rcd at 15412 para. 340.

[972] *Second Report and Order,* 22 FCC Rcd at 15412 para. 340.

[973] *Second Report and Order,* 22 FCC Rcd at 15412 para. 340.

[974] *Second Report and Order,* 22 FCC Rcd at 15412 para. 343. As the Commission further indicated in the *Second Report and Order,* and which the Commission tentatively proposes to continue to follow, the trust account established by the Public Safety Broadband Licensee would be for the benefit of public safety licensees being relocated, with the Public Safety Broadband Licensee acting as trustee of such account. The Public Safety Broadband Licensee would not be permitted to draw on this account until the D Block license(s) is granted to the D Block auction

Continued

auction results in one or more regional D Block license winners, that party(ies) will similarly be required, no later than the date upon which the executed NSA is submitted to the Commission, to deposit the total cost amount identified in the narrowband relocation plan(s) that it, together with the Public Safety Broadband Licensee, submitted to the Commission into a trust account established by the Public Safety Broadband Licensee, to finance the narrowband relocation. In the event that the D Block is licensed on a regional basis, but not all regional licenses are sold at auction, the narrowband relocation costs associated with any such unsold region (identified in the individual narrowband relocation plans submitted for each such region by the Public Safety Broadband Licensee) will be borne on a *pro rata* basis by all the regional D Block license winners. In this latter case, the Commission will delegate authority to the Public Safety and Homeland Security Bureau to determine and identify in a public notice the amount each D Block regional licensee is required to deposit into the narrowband relocation trust account established by the Public Safety Broadband Licensee.

IV. Procedural Matters

A. Initial Regulatory Flexibility Analysis

460. Section 213 of the Consolidated Appropriations Act 2000 provides that the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, shall not apply to the rules and competitive bidding procedures for frequencies in the 746–806 MHz Band,[975] which includes the frequencies of both the D Block license and the 700 MHz public safety broadband and narrowband spectrum. Accordingly, the Commission has not prepared an Initial Regulatory Flexibility Analysis in connection with the *Third FNPRM.*

B. Initial Paperwork Reduction Act Analysis of 1995 Analysis

461. This document contains proposed new or modified information collection requirements. The Commission notes, however, that Section 213 of the Consolidated Appropriations Act 2000 provides that rules governing frequencies in the 746–806 MHz Band, which encompass the spectrum associated with both the D Block license and the 700 MHz public safety broadband and narrowband spectrum, become effective immediately upon publication in the **Federal Register** without regard to certain sections of the Paperwork Reduction Act.[976] The Commission is therefore not inviting comment pursuant to the Paperwork Reduction Act on any information collections proposed in this document.

C. Other Procedural Matters

1. Ex Parte Presentations

462. The rulemaking shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.[977] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.[978] Other requirements pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.[979]

2. Comment Filing Procedures

463. Pursuant to Sections 1.415 and 1.419 of the Commission's rules,[980] interested parties may file comments on or before the dates indicated on the first page of this document. All filings related to this Third FNPRM should refer to WT Docket No. 06–150 and PS Docket No. 06–229. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.[981]

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the website for submitting comments.
- ECFS filers must transmit one electronic copy of the comments for WT Docket No. 06–150 and PS Docket No. 06–229. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and WT Docket No. 06–150 and WT Docket No. 06–229. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

464. Parties should send a copy of their filings to: Neşe Guendelsberger, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *nese.guendelsberger@fcc.gov*; and Jeff Cohen, Public Safety and Homeland Security Bureau, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *jeff.cohen@fcc.gov*. Parties shall also serve one copy with the Commission's

winner(s), and then would be limited to using these funds solely for relocating eligible narrowband operations consistent with the requirements and limitations set forth herein. The Public Safety Broadband Licensee would then be responsible for implementing the relocation plan, including administering payment of relocation funds to equipment vendors, and ensuring that all affected licensees are relocated in accordance with the relocation schedule contained in the relocation plan as approved by the Chief of the Public Safety and Homeland Security Bureau. *See id.*

[975] In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Sections 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act 2000, Pub. L. No. 106–113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A)–(B); *see* 145 Cong. Rec. H12493–94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at sec. 213(a)(4)(A)–(B).

[976] *Id.*

[977] 47 CFR 1.200 *et seq.*

[978] *See* 47 CFR 1.1206(b)(2).

[979] 47 CFR 1.1206(b).

[980] 47 CFR 1.415, 1.419.

[981] *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).

copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, Room CY–B402, 445 12th Street, SW., Washington, DC 20554, (800) 378–3160, or via e-mail to *fcc@bcpiweb.com.*

465. Comments filed in response to this notice of proposed rulemaking will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, Room CY–A257, 445 12th Street, SW., Washington, DC 20554 and via the Commission's Electronic Comment Filing System (ECFS) by entering the docket numbers WT Docket No. 06–150 and PS Docket No. 06–229. The documents may also be purchased from BCPI, telephone (800) 378–3160, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com.*

3. Accessible Formats

466. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CARTS, *etc.*) by e-mail: *FCC504@fcc.gov*; phone: 202–418–0530 (voice), 202–418–0432 (TTY).

V. Ordering Clauses

467. Accordingly, it is ordered pursuant to sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 614, 615, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c), 157, 160, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, and 337, that this *third further notice of proposed rulemaking* in WT Docket No. 06–150 and PS Docket No. 06–229 is adopted. The *third further notice of proposed rulemaking* shall become effective upon publication in the **Federal Register**.

468. It is further ordered that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on the *third further notice of proposed rulemaking* on or before November 3, 2008, and reply comments on or before November 12, 2008.

469. It is further ordered that the Commission *shall send* a copy of this *third further notice of proposed rulemaking* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 27

Communications common carriers, Radio, Wireless radio services.

47 CFR Part 90

Civil defense, Common carriers, Emergency medical services, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 27 and 90 as follows:

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

1. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

2. Section 27.4 is amended by revising the following definitions to read as follows:

§ 27.4 Terms and definitions.

* * * * *

Network Sharing Agreement (NSA). An agreement entered into between the winning bidder of an Upper 700 MHz D Block license, the Upper 700 MHz D Block licensee, the Network Assets Holder, the Operating Company, the Public Safety Broadband Licensee, and any other related entities that the Commission may require or allow regarding the shared wireless broadband network associated with that 700 MHz Public/Private Partnership that will operate on the 758–763 MHz and 788–793 MHz bands and the 763–768 MHz and 793–798 MHz bands.

* * * * *

Upper 700 MHz D Block license. The Upper 700 MHz D Block license authorizes services in the 758–763 MHz and 788–793 MHz bands.

* * * * *

3. Section 27.6 is amended by revising paragraphs (a) introductory text and (b)(3) to read as follows:

§ 27.6 Service areas.

(a) WCS service areas include Economic Areas (EAs), Major Economic Areas (MEAs), Regional Economic Area Groupings (REAGs), cellular markets comprising Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs), Public Safety Regions (PSRs) and a nationwide area. MEAs and REAGs are defined in the Table immediately following paragraph (a)(1) of this section. Both MEAs and REAGs are based on the U.S. Department of Commerce's EAs. See 60 FR 13114 (March 10, 1995). In addition, the Commission shall separately license Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico, which have been assigned Commission-created EA numbers 173–176, respectively. PSRs are comprised of the fifty-five 700 MHz Regional Planning Committee regions, See 66 FR 51669–02 (October 10, 2001) (as modified by Public Notice DA 01–2112, *Public Safety 700 MHz Band—General Use Channels: Approval of Changes to Regional Planning Boundaries of Connecticut and Michigan* (rel. Sept. 10, 2001), and three additional regions. The three additional PSR regions cover the same areas that are covered by the EAs for: The Gulf of Mexico; Guam and the Northern Mariana Islands; and American Samoa. PSRs are defined in the table immediately following paragraph (b)(3)(ii) of this section. The nationwide area is comprised of the geographic areas covered by the 58 PSRs and covers the same area covered by contiguous 48 states, Alaska, Hawaii, the Gulf of Mexico, and all of the U.S. territories included in Commission-created EAs. Maps of the EAs, MEAs, MSAs, RSAs, and REAGs and the **Federal Register** notice that established the 172 EAs are available for public inspection and copying at the Reference Information Center, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Maps of the PSRs are also available for public inspection and copying at the Reference Information Center, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

* * * * *

(b) * * *

(3) Service areas for Block D in the 758–763 MHz and 788–793 MHz bands will be determined based on the results of the auction for licenses with respect to Block D. The Commission will offer in such an auction licenses for the following geographic service areas:

(i) A nationwide area as defined in paragraph (a) of this section.

(ii) Public Safety Regions (PSRs) as defined in paragraph (a) of this section. The geographic boundaries of the PSRs are defined in the table below:

PSR No.	Geographical boundaries of public safety regions (PSRS)
	States, counties and territories included in regions
1	Alabama.
2	Alaska.
3	Arizona.
4	Arkansas.
5	California–South (to the northernmost borders of San Luis Obispo, Kern, and San Bernardino Counties).
6	California–North (that part of California not included in California-South).
7	Colorado.
8	New York–Metropolitan—New York: Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, Dutchess, and Westchester Counties; New Jersey: Bergen, Essex, Hudson, Morris, Passaic, Sussex, Union, Warren, Middlesex, Somerset, Hunterdon, Mercer, and Monmouth Counties.
9	Florida.
10	Georgia.
11	Hawaii.
12	Idaho.
13	Illinois (all except area in Region 54).
14	Indiana (all except area in Region 54).
15	Iowa.
16	Kansas.
17	Kentucky.
18	Louisiana.
19	New England—Maine; New Hampshire; Vermont; Massachusetts; Rhode Island; Connecticut.
20	Maryland; Washington, DC; Virginia—Northern (Arlington, Fairfax, Fauquier, Loudoun, Prince William and Stafford Counties; and Alexandria, Fairfax, Falls Church, Manassas and Manassas Park Cities).
21	Michigan.
22	Minnesota.
23	Mississippi.
24	Missouri.
25	Montana.
26	Nebraska.
27	Nevada.
28	New Jersey (except for counties included in the New York-Metropolitan, Region 8, above); Pennsylvania (Bucks, Chester, Montgomery, Philadelphia, Berks, Delaware, Lehigh, Northampton, Bradford, Carbon, Columbia, Dauphin, Lackawanna, Lancaster, Lebanon, Luzerne, Lycoming, Monroe, Montour, Northumberland, Pike, Schuylkill, Sullivan, Susquehanna, Tioga, Wayne, Wyoming and York Counties); Delaware.
29	New Mexico.
30	New York—Albany (all except area in New York—Metropolitan, Region 8, and New York—Buffalo, Region 55).
31	North Carolina.
32	North Dakota.
33	Ohio.
34	Oklahoma.
35	Oregon.
36	Pennsylvania (all except area in Region 28, above).
37	South Carolina.
38	South Dakota.
39	Tennessee.
40	Texas—Dallas (including the counties of Cooke, Grayson, Fannin, Lamar, Red River, Bowie, Wise, Denton, Collin, Hunt, Delta, Hopkins, Franklin, Titus, Morris, Cass, Tarrant, Dallas, Palo Pinto, Parker, Rockwall, Kaufman, Rains, VanZandt, Wood, Smith, Camp, Upshur, Gregg, Marion, Harrison, Panola, Rusk, Cherokee, Anderson, Henderson, Navarro, Ellis, Johnson, Hood, Somervell and Erath).
41	Utah.
42	Virginia (all except area in Region 20, above).
43	Washington.
44	West Virginia.
45	Wisconsin (all except area in Region 54).
46	Wyoming.
47	Puerto Rico.
48	U.S. Virgin Islands.
49	Texas—Austin (including the counties of Bosque, Hill, Hamilton, McLennan, Limestone, Freestone, Mills, Coryell, Falls, Robertson, Leon, San Saba, Lampasas, Bell, Milam, Brazos, Madison, Grimes, Llano, Burnet, Williamson, Burleson, Lee, Washington, Blanco, Hays, Travis, Caldwell, Bastrop, and Fayette).
50	Texas—El Paso (including the counties of Knox, Kent, Stonewall, Haskell, Throckmorton, Gaines, Dawson, Borden, Scurry, Fisher, Jones, Shackelford, Stephens, Andrews, Martin, Howard, Mitchell, Nolan, Taylor, Callahan, Eastland, Loving, Winkler, Ector, Midland, Glasscock, Sterling, Coke, Runnels, Coleman, Brown, Comanche, Culberson, Reeves, Ward, Crane, Upton, Reagan, Irion, Tom Green, Concho, McCulloch, Jeff Davis, Hudspeth, El Paso, Pecos, Crockett, Schleicher, Menard, Mason, Presidio, Brewster, Terrell, Sutton, and Kimble).
51	Texas—Houston (including the counties of Shelby, Nacogdoches, San Augustine, Sabine, Houston, Trinity, Angelina, Walker, San Jacinto, Polk, Tyler, Jasper, Newton, Montgomery, Liberty, Hardin, Orange, Waller, Harris, Chambers, Jefferson, Galveston, Brazoria, Fort Bend, Austin, Colorado, Wharton, and Matagorda).

PSR No.	Geographical boundaries of public safety regions (PSRS)
	States, counties and territories included in regions
52	Texas—Lubbock (including the counties of Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Grey, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Hardeman, Foard, Wilbarger, Witchita, Clay, Montague, Jack, Young, Archer, Baylor, King, Dickens, Crosby, Lubbock, Kockley, Cochran, Yoakum, Terry, Lynn, and Garza).
53	Texas—San Antonio (including the counties of Val Verde, Edwards, Kerr, Gillespie, Real, Bandera, Kendall, Kinney, Uvalde, Medina, Bexar, Comal, Guadalupe, Gonzales, Lavaca, Dewitt, Karnes, Wilson, Atascosa, Frio, Zavala, Maverick, Dimmit, LaSalle, McMullen, Live Oak, Bee, Goliad, Victoria, Jackson, Calhoun, Refugio, Aransas, San Patricio, Nueces, Jim Wells, Duval, Webb, Kleberg, Kenedy, Brooks, Jim Hogg, Zapata, Starr, Hidalgo, Willacy, and Cameron).
54	Chicago—Metropolitan—Illinois: Winnebago, McHenry, Cook, Kane, Kendall, Grundy, Boone, Lake, DuPage, DeKalb, Will, and Kankakee Counties; Indiana: Lake, LaPorte, Jasper, Starke, St. Joseph, Porter, Newton, Pulaski, Marshall, and Elkart Counties; Wisconsin: Kenosha, Milwaukee, Washington, Dodge, Walworth, Jefferson, Racine, Ozaukee, Waukesha, Dane, and Rock Counties.
55	New York—Buffalo (including the counties of Niagara, Chemung, Schuyler, Seneca, Erie, Chautauqua, Cattaraugus, Allegany, Wyoming, Genesee, Orleans, Monroe, Livingston, Steuben, Ontario, Wayne, and Yates).
56	Guam and the Northern Mariana Islands.
57	American Samoa.
58	Gulf of Mexico.

* * * * *

4. Section 27.13 is amended by revising paragraphs (b) and (c) to read as follows:

§ 27.13 License period.

* * * * *

(b) *698–757 MHz, 775–787 MHz and 805–806 MHz bands.* Initial authorizations for the 698–757 MHz and 776–787 MHz bands will extend for a term not to exceed ten years from February 17, 2009, except that initial authorizations for a part 27 licensee that provides broadcast services, whether exclusively or in combination with other services, will not exceed eight years. Initial authorizations for the 775–776 MHz and 805–806 MHz bands shall not exceed January 1, 2015. Licensees that initiate the provision of a broadcast service, whether exclusively or in combination with other services, may not provide this service for more than eight years or beyond the end of the license term if no broadcast service had been provided, whichever period is shorter in length.

(c) *The paired 758–763 and 788–793 MHz bands.* Initial WCS authorizations for the paired 758–763 MHz and 788–793 MHz bands will have a term not to exceed 15 years from the date of initial issuance or renewal.

* * * * *

5. Section 27.14 is amended by revising paragraphs (e), (m), (n), and (o), redesignating paragraph (o) as paragraph (q) and adding a new paragraph (p), to read as follows:

§ 27.14 Construction requirements; Criteria for renewal.

* * * * *

(e) Comparative renewal proceedings do not apply to WCS licensees holding authorizations for the 698–757 MHz and 776–787 MHz bands. These licensees must file a renewal application in accordance with the provisions set forth in § 1.949 of this chapter, and must make a showing of substantial service, independent of its performance requirements, as a condition for renewal at the end of each license term.

* * * * *

(m) A WCS licensee holding an authorization for the D Block in the 758–763 MHz and 788–793 MHz bands (the Upper 700 MHz D Block licensee) shall meet the following construction requirements in each PSR, except for the Gulf of Mexico PSR, comprising its license area.

(1) The Upper 700 MHz D Block licensee shall provide signal coverage and offer terrestrial service to at least 40 percent of the population in each PSR by the end of the fourth year, and 75 percent by the end of the tenth year of its license term. At the end of 15 years, the licensee must meet one of the following final benchmarks depending on the population density of the PSR:

(i) For PSRs with a population density equal to or greater than 500 people per square mile, the licensee will be required to provide signal coverage and offer terrestrial service to at least 98 percent of the population by the end of the fifteenth year;

(ii) For PSRs with a population density equal to or greater than 100 people per square mile and less than 500 people per square mile, the licensee will be required to provide signal coverage and offer terrestrial service to at least 94 percent of the population by the end of the fifteenth year; and

(iii) For PSRs with a population density less than 100 people per square mile, the licensee will be required to provide signal coverage and offer terrestrial service to at least 90 percent of the population by the end of the fifteenth year.

(2) The Upper 700 MHz D Block licensee may modify its population-based construction benchmarks with the agreement of the Public Safety Broadband Licensee and the prior approval of the Commission, where such a modification would better serve to meet commercial and public safety needs. Such modifications must be incorporated into the Network Sharing Agreement.

(3) The Upper 700 MHz D Block licensee shall meet the population benchmarks based using the most recent decennial U.S. Census Data available at the time of measurement for each PSR comprising its license area. The network and signal levels employed to meet these benchmarks must be consistent with the requirements in § 27.1305.

(4) A build-out schedule must be specified in the Network Sharing Agreement consistent with the requirements in this section. The build-out schedule shall include coverage for major highways and interstates, as well as such additional areas that are necessary to provide coverage for all incorporated communities with a population in excess of 3,000, unless the Public Safety Broadband Licensee and the Upper 700 MHz D Block licensee jointly determine, in consultation with a relevant community, that such additional coverage will not provide significant public benefit. Any coverage agreed under the Network Sharing Agreement to extend to major highways, interstates, and incorporated communities with populations greater than 3,000 beyond the network coverage required by the population benchmarks must be completed no later than the end

of the D Block license term. To the extent that coverage of major highways, interstates and incorporated communities with populations in excess of 3,000 requires the D Block licensee to extend coverage beyond what is required to meet its population benchmarks, the licensee shall be permitted to meet that additional coverage through non-terrestrial means, such as Mobile Satellite Service or other such technologies.

(n) The Upper 700 MHz D Block licensee holding an authorization for the Gulf of Mexico PSR shall negotiate with the Public Safety Broadband Licensee, as part of the Network Sharing Agreement, a coverage and service plan for public safety use in that region. Any disputes shall be resolved by the Commission pursuant to the dispute resolution procedures.

(o) The Upper 700 MHz D Block licensee shall demonstrate compliance with performance requirements by filing a construction notification with the Commission within 15 days of the expiration of the applicable benchmark, in accordance with the provisions set forth in § 1.946(d) of this chapter. The licensee must certify whether it has met the applicable performance requirement and must file a description and certification of the areas for which it is providing service. The construction notifications must include the following:

(1) Certifications of the areas that were scheduled for construction and service by that date under the Network Sharing Agreement for which it is providing service, the type of applications it is providing for each area, and the type of technology it is utilizing to provide these applications.

(2) Electronic coverage maps and supporting technical documentation providing the assumptions used by the licensee to create the coverage maps, including the propagation model and the signal strength necessary to provide service.

(p) At the end of its license term, the Upper 700 MHz D Block licensee must, in order to renew its license, make a showing of its success in meeting the material requirements set forth in the Network Sharing Agreement as well as all other license conditions, including the performance benchmark requirements set forth in this section.

* * * * *

6. Section 27.501 is revised to read as follows:

§ 27.501 746–763 MHz, 775–793 MHz, and 805–806 MHz bands subject to competitive bidding.

(a) Mutually exclusive applications for initial licenses in the 746–763 MHz, 775–793 MHz, and 805–806 MHz bands are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

(b) Competitive bidding rules for licenses in Block D in the 758–763 MHz and 788–793 MHz bands.

(1) Applications for licenses in the 758–763 MHz and 788–793 MHz bands are mutually exclusive if the licenses provide for use of different broadband platform technologies;

(2) For an auction of licenses in the 758–763 MHz and 788–793 MHz bands covering the entire nation, no licenses will be assigned based on the results of an auction unless at the close of bidding in such auction there are provisionally winning bids for licenses that cover at least fifty percent (50%) of the nation's population, as determined consistent with the Commission's pre-auction announcement of the population for which each license will authorize service;

(3) Notwithstanding any provision of § 1.2104(g)(2)(ii), whether or not combinatorial bidding is available in the auction, the percentage for the additional payment portion of any applicable default payment pursuant to § 1.2104(g)(2) will equal between 3 and 20 percent of the applicable bid, according to a percentage (or percentages) established by the Commission in advance of the auction;

(4) Notwithstanding any provision of § 1.2108, the Commission may defer the resolution of any petition to deny an application for any licenses in the 758–763 MHz and 788–793 MHz bands until the applicant, the Public Safety Broadband Licensee, and any other party the Commission may require or allow execute a Commission-approved NSA and such other agreements as the Commission may require or allow, and

(5) Notwithstanding any provisions of § 1.2109(b) or (c), whether or not combinatorial bidding is available in the auction, if the Commission for any reason does not assign a license to the applicant holding the winning bid for that license at the close of the auction, the Commission may, at its discretion, offer the same license to another party making the next highest bid for that license.

7. Section 27.502 is amended by revising the introductory text and adding paragraph (c) to read as follows:

§ 27.502 Designated entities.

Eligibility for small business provisions:

* * * * *

(c) The spectrum capacity of any Upper 700 MHz D Block license that is subject to any arrangements for the lease or resale (including under a wholesale agreement) of spectrum capacity shall not be considered when applying the provisions of § 1.2110(b)(1)(iv)(A) of this chapter.

7A. Section 27.1303 is amended by revising paragraph (e) to read as follows:

§ 27.1303 Upper 700 MHz D Block license conditions.

* * * * *

(e) The Upper 700 MHz D Block licensee must provide the Public Safety Broadband Licensee with priority access during emergencies, as specified in § 27.1317(e).

* * * * *

7B. Section 27.1305 is revised to read as follows:

§ 27.1305 Shared wireless broadband network.

The Shared Wireless Broadband Network developed by the 700 MHz Public/Private Partnership must be designed to meet requirements associated with an interoperable, nationwide public safety broadband network as specified in this section. All specified mandatory requirements as defined in this section must be incorporated in the Network Sharing Agreement, and shall be used in the determination of compliance under § 27.14(p). The Public Safety Broadband Licensee and the Upper 700 MHz D Block licensee may add any capabilities or features beyond those in these rules based on mutually agreeable terms under the Network Sharing Agreement. The Shared Wireless Broadband Network shall incorporate the following:

(a) A design for public safety operations over a broadband IP-based technology platform that utilizes standardized commercial technology; provides fixed and mobile voice, video, and data capability that is interoperable across public safety local and state agencies, jurisdictions, and geographic areas; and includes current and evolving state-of-the-art technologies reasonably made available in the commercial marketplace with features beneficial to the public safety community.

(1) Such a design shall provide a nationwide common radio access network air interface to enable the Shared Wireless Broadband Network to support nationwide level interoperability. The common air interface shall allow migration to future

technology upgrades. In the case of regional Upper 700 MHz D Block licensees, the common radio access network air interface will be determined via the auction process and each regional Upper 700 MHz D Block licensee will be required to enter into arrangements both with other regional Upper 700 MHz D Block licensees and with the Public Safety Broadband Licensee as necessary to ensure interoperability between their networks. Such arrangements must provide, at a minimum, that each regional Upper 700 MHz D Block licensee will provide the ability to roam on its network to public safety users of all other Shared Wireless Broadband Networks. Regional Upper 700 MHz D Block licensees are not permitted to assess special roaming charges (over and above service fees charged for in-region use) in cases where public safety users require roaming for mutual aid or emergencies.

(2) The technology selected for the Shared Wireless Broadband Network shall be permitted to evolve based on commercial wireless upgrade timeframes, except that future upgrades shall include user equipment backward compatibility, as supported by commercial product availability and specified in the technology standards, to allow for commercially reasonable transition periods for public safety entities' user equipment. The notification and impact management processes relating to technology upgrades, and migration to such upgrades, shall be defined and agreed to in the Network Sharing Agreement.

(3) To promote interoperability between the Shared Wireless Broadband Network and voice-based public safety networks in other frequency bands, the Upper 700 MHz D Block licensee will publish IP-based specifications describing how such other public safety networks may access the Upper 700 MHz D Block licensee's Shared Wireless Broadband Network via bridges and/or gateways. The Upper 700 MHz D Block licensee shall charge these other public safety networks for such access no more than the relevant fee established or approved by the Commission. Public safety users shall bear the costs of the bridges and gateways, including installation and maintenance costs.

(4) The Shared Wireless Broadband Network shall support a Voice over Internet Protocol (VoIP) capability to complement existing public safety mission critical voice communication systems. The VoIP capability shall allow interconnection with the Public Switched Telephone Network as well as with other public safety VoIP users on the network. VoIP features will include but not be limited to Push-To-Talk.

(b) Availability, robustness, and hardening requirements as follows:

(1) The Shared Wireless Broadband Network shall provide 99.6 percent network availability for all terrestrial elements of operation in the coverage areas certified pursuant to § 27.14(o)(1), calculated over each license area annually, starting four years after license issuance. The Upper 700 MHz D Block licensee shall use commercially reasonable efforts to provide network availability above this requirement, with the target of 99.9 percent network availability.

(2) The method for measuring availability shall be defined in the Network Sharing Agreement, which shall:

(i) Be a measure of infrastructure availability as measured from the cell site radio antenna through and across the core network;

(ii) Exclude radio signal coverage and scheduled maintenance downtime with prior notice to the Public Safety Broadband Licensee;

(iii) Exclude outages caused by actions or events outside the reasonable control of the Upper 700 MHz D Block licensee; and

(iv) Exclude outages only affecting limited applications.

(3) The Shared Wireless Broadband Network design specifications shall include commercial best practices, such as Network Reliability and Interoperability Council best practices, that take into consideration local influencing factors such as weather, geology, and building codes on network attributes such as hardening of transmission facilities and antenna towers, extended backup power, seismic safety standards, and accommodations for wind, ice, and other natural phenomenon.

(4) The Upper 700 MHz D Block licensee and the Public Safety Broadband Licensee, in consultation with the relevant community, shall jointly designate ''critical'' sites. The designation of sites as ''critical'' shall not be required to cover more than 35 percent of the Shared Wireless Broadband Network sites for the Upper 700 MHz D Block license; however, the Upper 700 MHz D Block licensee shall use commercially reasonable efforts to designate as ''critical'' additional sites requested by the Public Safety Broadband Licensee, up to 50 percent of all the licensee's sites. Sites designated as ''critical'' shall have battery backup power of 8 hours, and shall have generators with a fuel supply sufficient to operate the generators for at least 48 hours. The Upper 700 MHz D Block licensee shall make commercially reasonable efforts to provide a fuel supply at ''critical'' sites above this requirement sufficient for a minimum of 5 days. The Upper 700 MHz D Block licensee and the Public Safety Broadband Licensee, in consultation with the relevant community, shall jointly determine the sites that will require redundant backhaul in order to comply with the network availability requirements in this section.

(5) The Upper 700 MHz D Block Licensee and the Public Safety Broadband Licensee may agree on other methods to improve network resiliency in lieu of designating ''critical'' cell sites as described in paragraph (b)(4) of this section. These may include deployment of mobile assets or the use of satellite facilities.

(c) A capability incorporated into the Shared Wireless Broadband Network infrastructure to provide monthly usage reports covering network capacity and priority access so that the Public Safety Broadband Licensee can monitor usage and provide appropriate feedback to the Upper 700 MHz D Block licensee on operational elements of the network.

(d) Security and encryption consistent with commercial best practices. For purposes of complying with this paragraph, the Upper 700 MHz D Block licensee shall:

(1) Comply with U.S. government standards, guidelines, and models that are commercial best practices for wireless broadband networks.

(2) Implement controls to ensure that public safety priority and secure network access are limited to authorized public safety users and devices, and utilize an open standard protocol for authentication.

(3) Allow for public safety network authentication, authorization, automatic logoff, transmission secrecy and integrity, audit control capabilities, and other unique attributes.

(e) A mechanism to ensure Quality of Service (QoS) for public safety and to establish various levels of priority for public safety communications. The Upper 700 MHz D Block licensee shall not be obligated to implement this provision before appropriate standards are developed and appropriate hardware and software are available on commercially reasonable terms. The Upper 700 MHz D Block Licensee and the Public Safety Broadband Licensee shall use reasonable efforts to work with applicable standards organizations, network equipment manufacturers, and other suppliers to accelerate the commercially reasonable availability of these features for the Shared Wireless

Broadband Network. The Public Safety Broadband Licensee shall have authority to establish access priority and service levels, and authenticate and authorize public safety users. In addition, the following provisions for QoS shall be incorporated into the operational capabilities of the Shared Wireless Broadband Network.

(1) Priority shall be defined as Public Safety Broadband Licensee-approved user or class of users, network, application, and services priorities that, via user or class of users or device identification, or both, offer the highest assignable levels of priority for network access and use of network resources, services, and applications.

(2) The Shared Wireless Broadband Network shall provide emergency priority access pursuant to § 27.1307(e).

(3) The Shared Wireless Broadband Network shall provide an appropriate priority to 9–1–1 calls.

(4) QoS resource reservation and session control mechanisms shall be incorporated into the operational capabilities of the Shared Wireless Broadband Network.

(5) QoS shall be considered to be the full class of mechanisms that are found at multiple IP layers in the network (both radio access network and core), and that provision and apply priority for IP packet based traffic.

(6) The assignment of network resources shall enable user or service priority, or both, in addition to the QoS requirements of the application.

(7) The Shared Wireless Broadband Network shall support multiple IP data services and application session flows between a user device and network, where each flow may have a different QoS requirement and priority level.

(8) If network resources are not available to meet a resource reservation request, the Shared Wireless Broadband Network shall have the ability to provide a new QoS consistent with the limited network resources.

(f) Operational capabilities to support public safety systems as specified below:

(1) The Shared Wireless Broadband Network shall provide access for all applications and services, hosted applications and services, and third party public safety applications and services specified in the Network Sharing Agreement. The Public Safety Broadband Licensee shall give consideration of particular applications to the overall impact on overall system performance.

(2) The Shared Wireless Broadband Network shall provide for the application data rates shown in Table 1.

(3) The Shared Wireless Broadband Network shall be designed to provide edge of cell data rates shown in Table 2. Typical data rates should be designed for at least 1 Mbs downlink and 600 kbps uplink. The data link speeds for public safety users must be at least as fast as the best data speeds provided to commercial users of the Shared Wireless Broadband Network.

(4) The Shared Wireless Broadband Network must provide indoor coverage for VoIP consistent with the propagation parameters shown in Table 3.

(5) For purposes of these Tables 2 and 3, the following definitions apply in terms of population per square mile: Dense urban: 15,000 people or greater; urban 2,500–14,999; suburban 200–2499; and rural 0–199.

(6) The data rates in this section are design objectives and are not to be applied for a particular device, time or location.

(7) Signal coverage, propagation, and capacity parameters in Table 2 and 3 shall be reviewed by the Upper 700 MHz D Block licensee and the Public Safety Broadband Licensee no less than every four years to assess the impact of benefits from technology evolution and general improvement in network coverage consistent with paragraph (a)(2) of this section.

TABLE 1 TO § 27.1305—APPLICATIONS AND SERVICES QOS ATTRIBUTES

Application/service	Description	Data rate
File transfer	FTP and general data upload/download	Greater than 256kb/s.
E-mail	Both Web based and Entity Hosted E-Mail Service	Less than 16kb/s.
Web browsing	Intranet, extranet, and internet	Greater than 32kb/s.
Mobile voice	Equivalent to current commercial mobile voice	Minimum 15 kb/s.
Push to talk (PTT) voice	Commercial grade PTT/PoC offerings with group call, alerting, and monitoring capability.	4–25 kb/s.
Indoor video	Video that is transmitted from inside a building	20–384 kb/sF.
Outdoor video	Video that is transmitted from the street	32–384 kb/s.
Location services	All location based services	Less than 16kb/s.
Database transactions	Remote databases access both under the entities' direct control as well as databases that are local.	Less than 32kb/s.
Messaging	Instant messaging, SMS, and Push to X services	Less than 16kb/s.
Network Operations data	Network operational and maintenance data including over the air programming and remote client management.	Less than 32kb/s.
Dispatch data	Data as it relates to computer aided dispatching	Less than 64kb/s.
Generic traffic	General category for traffic that does not fall within any of the categories described above, and that generates less than 64kb of data per second.	Less than 64kb/s.
Telemetry	Remote measurement and reporting of information for radio devices, vehicles, and sensor data.	70–120 kb/s.
Virtual Private Networking	Secure remote access to entity LAN and WAN environments	64–256 kb/s.

TABLE 2 TO § 27.1305—DATA PROPAGATION AND CAPACITY PARAMETERS

Morphology	Cell coverage area reliability (%)	Sector loading factor (%)	Forward link throughput on-street single user average cell-edge (kbps)	Reverse link throughput on-street single user average cell-edge (kbps)
Dense Urban	95	70	256	256
Urban	95	70	256	256
Suburban	95	70	128	128
Rural	95	70	128	128
Highway	95	70	64	64

TABLE 3 TO § 27.1305—VOICE PROPAGATION AND CAPACITY PARAMETERS

Morphology	In-building penetration margin (dB)	Cell coverage area reliability (%)	Sector loading factor (%)
Dense Urban	22	95	70
Urban	19	95	70
Suburban	13	95	70
Rural	6	95	70
Highway	6	95	70

7C. Section 27.1307 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 27.1307 Spectrum use in the network.

* * * * *

(d) The Upper 700 MHz D Block licensee may construct and operate the Shared Wireless Broadband Network using both the 758–763 MHz and 788–793 MHz bands as well as the 763–768 MHz and 793–798 MHz bands as a combined resource. If the Upper 700 MHz D Block licensee chooses to operate the spectrum as a combined resource, however, 50 percent of the capacity available from the combined 20 megahertz of spectrum must be assigned to public safety users and the other 50 percent must be assigned to the commercial users, consistent with the respective capacity and priority rights of the Upper 700 MHz D Block license and the Public Safety Broadband License and with rules in this part.

(e) Emergency Priority Access. (1) The Upper 700 MHz D Block licensee must provide public safety users priority access to, but not preemptive use of, up to 40 percent of the commercial spectrum capacity (two megahertz in each of the uplink and downlink blocks), assuming the full public safety broadband block spectrum capacity is being used, for an aggregate total of 14 megahertz of overall network capacity in the following circumstances:

(i) The President or a state governor declares a state of emergency.

(ii) The President or a state governor issues an evacuation order impacting areas of significant scope.

(iii) The national or airline sector threat level is set to red.

(2) The D Block licensee must provide priority access to, but not preemptive use of, up to 20 percent of the commercial spectrum capacity (one megahertz in each of the uplink and downlink blocks) in the following circumstances:

(i) The National Weather Service issues a hurricane or flood warning likely to impact a significant area.

(ii) The occurrence of other major natural disasters, such as tornado strikes, tsunamis, earthquakes, or pandemics.

(iii) The occurrence of manmade disasters or acts of terrorism of a substantial nature.

(iv) The occurrence of power outages of significant duration and scope.

(v) The national threat level is set to orange.

(3) The Upper 700 MHz D Block licensee must assign the next available channel to the requesting public safety user over a commercial user—i.e., the public safety user would be placed at the top of the queue—and should not preempt a commercial call in progress. Emergency priority access is limited to the time and geographic scope of the emergency.

(4) To trigger emergency priority access, the Public Safety Broadband Licensee must request, on behalf of the impacted public safety agencies, that the Upper 700 MHz D Block licensee provide such access. Emergency priority access requests initiated by the Public Safety Broadband Licensee will cover a 24-hour time period, and must be reinitiated by the Public Safety Broadband Licensee for each 24-hour time period thereafter that the priority access is required.

(5) In the event that the Upper 700 MHz D Block licensee and the Public Safety Broadband Licensee do not agree that an emergency has taken place, the Public Safety Broadband Licensee may request the Defense Commissioner to resolve the dispute.

8. Section 27.1310 is amended by revising paragraphs (c), (d), (f), (g), and (j), and adding paragraphs (k) through (n), to read as follows:

§ 27.1310 Network sharing agreement.

* * * * *

(c) The definition of ''emergency'' for purposes of emergency priority access, as described in § 27.1307(e).

(d) All service fees to be imposed for services to public safety, including fees for normal network service, interconnected service, and fees for priority access to the D Block spectrum in an emergency.

* * * * *

(f) The right of the Public Safety Broadband Licensee to determine and approve the specifications of public safety equipment used on the network and the right to purchase its own subscriber equipment from any vendor it chooses, to the extent such specifications and equipment are

consistent with reasonable network management requirements.

(g) The terms, conditions, and timeframes pursuant to which the Upper 700 MHz D Block licensee must make available at least one handset suitable for public safety use that includes an integrated satellite solution.

* * * * *

(j) To the extent that interoperability arrangements between the Upper 700 MHz D Block licensee and the Public Safety Broadband Licensee are required under § 27.1305(a)(1), the terms and conditions of the arrangement, including the terms and conditions under which roaming will be provided to public safety users of other Shared Wireless Broadband Networks.

(k) The terms of a standard agreement under which public safety networks operating in other frequency bands may connect to the Shared Wireless Broadband Network pursuant to and in accordance with § 27.1305(a)(1).

(l) Terms regarding the establishment of access priorities, service levels and related requirements, and approval of public safety applications and end user devices, by the Public Safety Broadband Licensee.

(m) A process for forecasting demand for public safety usage.

(n) A contract term, not to exceed a 15 year period that coincides with the terms of the Upper 700 MHz D Block license and the Public Safety Broadband License.

8A. Section 27.1315 is amended by revising paragraphs (a), (b), (c), (f)(4), and (g) to read as follows:

§ 27.1315 Establishment, execution, and application of the network sharing agreement.

* * * * *

(a) *Approval of NSA as pre-condition for granting the Upper 700 MHz D Block License.* The Commission shall not grant an Upper 700 MHz D Block license until the winning bidder for the subject Upper 700 MHz D Block license has negotiated an NSA and such other agreements as the Commission may require or allow with the Public Safety Broadband Licensee, and the NSA and related agreements, or documents have been approved by the Commission and executed by the required parties. Parties to the NSA must also include the Upper 700 MHz D Block licensee, a Network Assets Holder, and an Operating Company, as these entities are defined in § 27.4.

(b) *Requirement of negotiation.* Negotiation of an NSA between a winning bidder for an Upper 700 MHz D Block license and the Public Safety Broadband Licensee must commence by the date the winning bidder files its long form application or the date on which the Commission designates the Public Safety Broadband Licensee, whichever is later, and must conclude within six months of that date. Parties to this negotiation are required to negotiate in good faith. Two members of the Commission staff, one from the Wireless Telecommunications Bureau and one from the Public Safety and Homeland Security Bureau, shall be present at all stages of the negotiation as neutral observers.

(c) *Reporting requirements.* A winning bidder for the Upper 700 MHz D Block license must file a report with the Commission within 10 business days of the commencement of the negotiation period certifying that active and good faith negotiations have begun, providing the date on which they commenced, and providing a schedule of the initial dates on which the parties intend to meet for active negotiations, covering at a minimum the first 30-day period. Beginning three months from the triggering of the six-month negotiation period, the winning bidder for a Upper 700 MHz D Block license and the Public Safety Broadband Licensee must jointly provide detailed reports, on a monthly basis and subject to a request for confidential treatment, on the progress of the negotiations throughout the remainder of the negotiations. These reports must include descriptions of all material issues that the parties have yet to resolve.

* * * * *

(f) * * *

(4) Determining that no resolution of the disputed issues can be made consistent with the public interest.

(g) *Lack of a Commission-approved NSA and such other agreements as the Commission may require or allow.* If a winning bidder chooses not to execute a Commission-approved NSA or such other agreements as the Commission may require or allow within 10 business days of Commission approval, the winning bidder's long-form application will be dismissed, the winning bidder will be deemed to have defaulted under § 1.2109(c) of this chapter, and the winning bidder will be liable for the default payment specified in § 1.2104(g)(2) of this chapter and § 27.501(b)(3). In all other circumstances in which the parties do not submit executed copies of a Commission-approved NSA and such other agreements within the time permitted by this section, and the Commission does not dismiss the winning bidder's long-form application for reasons other than the lack of a Commission-approved NSA, the winning bidder's long-form application will be dismissed and any payments made toward the winning bid will be returned to the payor(s) of record.

8B. Section 27.1330 is amended by revising paragraph (b) introductory text and (b)(4) to read as follows:

§ 27.1330 Local public safety build-out and operation.

* * * * *

(b) *Rights to early build-out in areas with a build-out commitment.* In an area where the Upper 700 MHz D Block licensee has committed, in the NSA, to build out by a certain date, a public safety entity may, with the pre-approval of the Public Safety Broadband Licensee and the Upper 700 MHz D Block licensee, and subject to the requirements set forth herein, construct a broadband network in that area at its own expense so long as the network is capable of operating on the Shared Wireless Broadband Network and meets all the requirements and specifications of the network required under the NSA.

* * * * *

(4) *Attribution of early build-out to applicable construction benchmarks.* Upon completion of construction, transfer of ownership to the Upper 700 MHz D Block licensee, and compensation as required herein, if applicable, the Upper 700 MHz D Block licensee may include the network constructed pursuant to the early build-out provisions herein for purposes of determining whether it has met its build-out benchmarks and the build-out requirements of the NSA.

* * * * *

9. Section 27.1340 is amended by adding paragraph (c) to read as follows:

§ 27.1340 Reporting obligations.

* * * * *

(c) The Upper 700 MHz D Block licensee must provide regular monthly reports on network usage to the Public Safety Broadband Licensee.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

10. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7) unless otherwise noted.

11. Section 90.7 is amended by revising the following definitions to read as follows:

§ 90.7 Definitions.

* * * * *

Network Sharing Agreement (NSA). An agreement entered into between the winning bidder of an Upper 700 MHz D Block license, the Upper 700 MHz D Block licensee, the Network Assets Holder, the Operating Company, the Public Safety Broadband Licensee, and any other related entities that the Commission may require or allow regarding the shared wireless broadband network associated with that 700 MHz Public/Private Partnership that will operate on the 758–763 MHz and 788–793 MHz bands and the 763–768 MHz and 793–798 MHz bands.

* * * * *

Upper 700 MHz D Block license. The Upper 700 MHz D Block license authorizes services in the 758–763 MHz and 788–793 MHz bands.

* * * * *

12. Section 90.18 is revised to read as follows:

§ 90.18 Public Safety 700 MHz Nationwide Broadband Network.

The 763–768/793–798 MHz band is dedicated to a broadband public safety communications system with a nationwide level of interoperability. A nationwide license for this spectrum is held by a single entity, the Public Safety Broadband Licensee, which must enter into the 700 MHz Public/Private Partnership with the Upper 700 MHz D Block licensee, pursuant to a Network Sharing Agreement and such other agreements as the Commission may require. The specific provisions relating to the 700 MHz Public/Private Partnership are set forth in subpart AA of this part and subpart N of part 27. The Public Safety 700 MHz Nationwide Broadband Network is established in PS Docket No. 06–229.

13. Section 90.523 is revised to read as follows:

§ 90.523 Eligibility.

This section implements the definition of public safety services contained in 47 U.S.C. 337(f)(1).

(a) *Public Safety Narrowband Spectrum Eligibility Criteria.* The eligibility criteria to hold Commission authorizations to deploy and operate systems in the 769–775 MHz and 799–805 MHz (public safety narrowband) frequency bands are as follows:

(1) *Public Safety Services.* Authorizations to deploy and operate systems in the 769–775 MHz and 799–805 MHz frequency bands are limited to services the sole or principal use of which is to protect the safety of life, health, or property, and which are not made commercially available to the public by the license holder. Public Safety Services may be provided either by:

(i) *State or Local Government Entities,* including any territory, possession, state, city, county, town, or similar State or local governmental entity, or

(ii) *Nongovernmental Organizations (NGO) that are authorized by a state or local government entity whose primary mission is the provision of Public Safety Services, provided that the NGO:*

(A) Has the ongoing authorization of a state or local governmental entity whose mission is the provision of Public Safety Services;

(B) Operates such authorized system consistent with the limitations in paragraph (a)(1) of this section; and

(C) Submits with its applications a written certification of support by the state or local governmental entity referenced in paragraph (a)(1)(ii)(A) of this section.

(2) NGOs assume all risks associated with operating under the conditions specified in paragraph (a)(1)(ii) of this section. Authorizations issued to NGOs to operate systems in the 769–775 MHz and 799–805 MHz frequency bands include the following condition: If at any time the authorizing governmental entity notifies the Commission in writing of such governmental entity's termination of its authorization of a NGO's operation of a system in the 769–775 MHz and 799–805 MHz frequency bands, the NGO's authorization shall terminate automatically.

(b) *Public Safety Broadband Spectrum Use Eligibility Criteria.* Only entities that meet the public safety narrowband spectrum eligibility criteria in paragraph (a) of this section, shall be eligible to access the Shared Wireless Broadband Network, operating in the 763–768 MHz and 793–798 MHz (public safety broadband) frequency bands, under the authorization of the Public Safety Broadband Licensee, in accordance with the terms of the Network Sharing Agreement governing the use of this network.

(c) *Public Safety Broadband License Eligibility Criteria.* The minimum eligibility requirements to hold the Public Safety Broadband License covering the 763–768 MHz and 793–798 MHz public safety broadband frequency bands are as follows:

(1) No commercial interest may be held in the Public Safety Broadband Licensee, and no commercial interest may participate in the management of the Public Safety Broadband Licensee.

(2) The Public Safety Broadband Licensee must be a non-profit organization.

(3) The Public Safety Broadband Licensee must be as broadly representative of the public safety radio user community as possible.

(4) The Public Safety Broadband Licensee must be in receipt of written certifications from no less than ten geographically diverse state and local governmental entities (the authorizing entities), with at least one certification from a state government entity and one from a local government entity, verifying that:

(i) They have authorized the Public Safety Broadband Licensee to use spectrum at 763–768 MHz and 793–798 MHz to provide the authorizing entities with public safety services; and

(ii) The authorizing entities' primary mission is the provision of public safety services.

(5) The sole or principal purpose of the services provided under the Public Safety Broadband Licensee's authorization must be to protect the safety of life, health, or property. These services must comply with the terms of the Network Sharing Agreement(s) and must not be made commercially available to the public.

14. Section 90.528 is amended by revising paragraph (d) and adding new paragraphs (h) and (i) to read as follows:

§ 90.528 Public safety broadband license.

* * * * *

(d) The term of the Public Safety Broadband License shall not exceed fifteen years from the date upon which the first D Block license is granted. The Public Safety Broadband Licensee is entitled to a renewal expectancy barring violations of law, rules or policy warranting denial of renewal.

* * * * *

(h) *Annual Budgeting Process.* The Public Safety Broadband Licensee shall establish an audited annual budgeting process, conducted by an external, independent auditor. Such audited budget shall be submitted to the Commission and presented at an open meeting of the Board of Directors. The Chief, Public Safety and Homeland Security Bureau, may request an audit of the Public Safety Broadband Licensee's expenses at any time.

(i) *Proposed Annual Budget.* As part of its annual budgeting process, the Public Safety Broadband Licensee shall submit for approval to the Chief, Public Safety and Homeland Security Bureau, and Chief, Wireless Telecommunications Bureau its proposed budget for each such upcoming fiscal year.

15. Section 90.1403 is amended by revising paragraphs (a) and (b)(1),(2),(3),(5),(8) and (9) and by adding paragraph (b)(10) to read as follows:

§ 90.1403 Public safety broadband license conditions.

(a) The Public Safety Broadband Licensee shall comply with all of the applicable requirements set forth in this subpart and shall comply with the terms of the Network Sharing Agreement(s) and such other agreements as the Commission may require or allow.

(b) * * *

(1) Negotiation of the NSA and such other agreements as the Commission may require or allow with the winning bidder at auction for a Upper 700 MHz Band D Block license, pursuant to the requirements set forth in § 90.1410.

(2) General administration of access to the 763–768 MHz and 793–798 MHz bands by individual public safety entities, as facilitated through the establishment of priority access, service levels and related requirements within the NSA process, approving public safety applications and end user devices, and related frequency coordination duties.

(3) Regular interaction with and promotion of the needs of the public safety entities with respect to access and use of the 763–768 MHz and 793–798 MHz bands, within the technical and operational confines of the governing NSA.

* * * * *

(5) Sole authority, which cannot be waived in the NSA(s), to approve, in consultation with the Upper 700 MHz D Block licensee, equipment and applications for use by public safety entities on the public safety broadband network. State or local entities may seek review of a decision by the Public Safety Broadband Licensee not to permit certain equipment or applications, or particular specifications for equipment or applications, from the Chief, Public Safety and Homeland Security Bureau.

* * * * *

(8) Exercise of sole discretion, pursuant to § 2.103 of this chapter, whether to permit Federal public safety agency use of the public safety broadband spectrum, with any such use subject to the terms and conditions of the governing NSA.

(9) Review of requests for early construction and operation of local public safety broadband networks on the 700 MHz public safety broadband spectrum in areas with and without a preexisting build-out commitment in the applicable NSA, pursuant to the procedures and requirements outlined for such waivers as described in § 90.1430.

(10) Review of requests for waiver submitted by public safety entities to conduct wideband operations pursuant to the procedures and restrictions in connection with such waivers as described in § 90.1432.

16. Section 90.1405 is revised to read as follows:

§ 90.1405 Shared wireless broadband network.

The Shared Wireless Broadband Network developed by the 700 MHz Public/Private Partnership must be designed to meet requirements associated with an interoperable, nationwide public safety broadband network as specified in this section. All specified mandatory requirements as defined in this section must be incorporated in the Network Sharing Agreement, and shall be used in the determination of compliance under § 27.14(p) of this chapter. The Public Safety Broadband Licensee and the Upper 700 MHz D Block licensee may add any capabilities or features beyond those in these rules based on mutually agreeable terms under the Network Sharing Agreement. The Shared Wireless Broadband Network shall incorporate the following:

(a) A design for public safety operations over a broadband IP-based technology platform that utilizes standardized commercial technology; provides fixed and mobile voice, video, and data capability that is interoperable across public safety local and state agencies, jurisdictions, and geographic areas; and includes current and evolving state-of-the-art technologies reasonably made available in the commercial marketplace with features beneficial to the public safety community.

(1) Such a design shall provide a nationwide common radio access network air interface to enable the Shared Wireless Broadband Network to support nationwide level interoperability. The common air interface shall allow migration to future technology upgrades. In the case of regional Upper 700 MHz D Block licensees, the common radio access network air interface will be determined via the auction process and each regional Upper 700 MHz D Block licensee will be required to enter into arrangements both with other regional Upper 700 MHz D Block licensees and with the Public Safety Broadband Licensee as necessary to ensure interoperability between their networks. Such arrangements must provide, at a minimum, that each regional Upper 700 MHz D Block licensee will provide the ability to roam on its network to public safety users of all other Shared Wireless Broadband Networks. Regional Upper 700 MHz D Block licensees are not permitted to assess special roaming charges (over and above service fees charged for in-region use) in cases where public safety users require roaming for mutual aid or emergencies.

(2) The technology selected for the Shared Wireless Broadband Network shall be permitted to evolve based on commercial wireless upgrade timeframes, except that future upgrades shall include user equipment backward compatibility, as supported by commercial product availability and specified in the technology standards, to allow for commercially reasonable transition periods for public safety entities' user equipment. The notification and impact management processes relating to technology upgrades, and migration to such upgrades, shall be defined and agreed to in the Network Sharing Agreement.

(3) To promote interoperability between the Shared Wireless Broadband Network and voice-based public safety networks in other frequency bands, the Upper 700 MHz D Block licensee will publish IP-based specifications describing how such other public safety networks may access the Upper 700 MHz D Block licensee's Shared Wireless Broadband Network via bridges and/or gateways. The Upper 700 MHz D Block licensee shall charge these other public safety networks for such access no more than the relevant fee established or approved by the Commission. Public safety users shall bear the costs of the bridges and gateways, including installation and maintenance costs.

(4) The Shared Wireless Broadband Network shall support a Voice over Internet Protocol (VoIP) capability to complement existing public safety mission critical voice communication systems. The VoIP capability shall allow interconnection with the Public Switched Telephone Network as well as with other public safety VoIP users on the network. VoIP features will include but not be limited to Push-To-Talk.

(b) Availability, robustness, and hardening requirements as follows:

(1) The Shared Wireless Broadband Network shall provide 99.6 percent network availability for all terrestrial elements of operation in the coverage areas certified pursuant to § 27.14(o)(1), calculated over each license area annually, starting four years after license issuance. The Upper 700 MHz D Block licensee shall use commercially reasonable efforts to provide network availability above this requirement, with the target of 99.9 percent network availability.

(2) The method for measuring availability shall be defined in the Network Sharing Agreement, which shall

(i) Be a measure of infrastructure availability as measured from the cell site radio antenna through and across the core network;

(ii) Exclude radio signal coverage and scheduled maintenance downtime with prior notice to the Public Safety Broadband Licensee;

(iii) Exclude outages caused by actions or events outside the reasonable control of the Upper 700 MHz D Block licensee; and

(iv) Exclude outages only affecting limited applications.

(3) The Shared Wireless Broadband Network design specifications shall include commercial best practices, such as Network Reliability and Interoperability Council best practices, that take into consideration local influencing factors such as weather, geology, and building codes on network attributes such as hardening of transmission facilities and antenna towers, extended backup power, seismic safety standards, and accommodations for wind, ice, and other natural phenomenon.

(4) The Upper 700 MHz D Block licensee and the Public Safety Broadband Licensee, in consultation with the relevant community, shall jointly designate ''critical'' sites. The designation of sites as ''critical'' shall not be required to cover more than 35 percent of the Shared Wireless Broadband Network sites for the Upper 700 MHz D Block license; however, the Upper 700 MHz D Block licensee shall use commercially reasonable efforts to designate as ''critical'' additional sites requested by the Public Safety Broadband Licensee, up to 50 percent of all the licensee's sites. Sites designated as ''critical'' shall have battery backup power of 8 hours, and shall have generators with a fuel supply sufficient to operate the generators for at least 48 hours. The Upper 700 MHz D Block licensee shall make commercially reasonable efforts to provide a fuel supply at ''critical'' sites above this requirement sufficient for a minimum of 5 days. The Upper 700 MHz D Block licensee and the Public Safety Broadband Licensee, in consultation with the relevant community, shall jointly determine the sites that will require redundant backhaul in order to comply with the network availability requirements in this section.

(5) The Upper 700 MHz D Block Licensee and the Public Safety Broadband Licensee may agree on other methods to improve network resiliency in lieu of designating ''critical'' cell sites as described in paragraph (b)(4) of this section. These may include deployment of mobile assets or the use of satellite facilities.

(c) A capability incorporated into the Shared Wireless Broadband Network infrastructure to provide monthly usage reports covering network capacity and priority access so that the Public Safety Broadband Licensee can monitor usage and provide appropriate feedback to the Upper 700 MHz D Block licensee on operational elements of the network.

(d) Security and encryption consistent with commercial best practices. For purposes of complying with this paragraph, the Upper 700 MHz D Block licensee shall:

(1) Comply with U.S. government standards, guidelines, and models that are commercial best practices for wireless broadband networks.

(2) Implement controls to ensure that public safety priority and secure network access are limited to authorized public safety users and devices, and utilize an open standard protocol for authentication.

(3) Allow for public safety network authentication, authorization, automatic logoff, transmission secrecy and integrity, audit control capabilities, and other unique attributes.

(e) A mechanism to ensure Quality of Service (QoS) for public safety and to establish various levels of priority for public safety communications. The Upper 700 MHz D Block licensee shall not be obligated to implement this provision before appropriate standards are developed and appropriate hardware and software are available on commercially reasonable terms. The Upper 700 MHz D Block Licensee and the Public Safety Broadband Licensee shall use reasonable efforts to work with applicable standards organizations, network equipment manufacturers, and other suppliers to accelerate the commercially reasonable availability of these features for the Shared Wireless Broadband Network. The Public Safety Broadband Licensee shall have authority to establish access priority and service levels, and authenticate and authorize public safety users. In addition, the following provisions for QoS shall be incorporated into the operational capabilities of the Shared Wireless Broadband Network.

(1) Priority shall be defined as Public Safety Broadband Licensee-approved user or class of users, network, application, and services priorities that, via user or class of users or device identification, or both, offer the highest assignable levels of priority for network access and use of network resources, services, and applications.

(2) The Shared Wireless Broadband Network shall provide emergency priority access pursuant to § 27.1307(e).

(3) The Shared Wireless Broadband Network shall provide an appropriate priority to 9–1–1 calls.

(4) QoS resource reservation and session control mechanisms shall be incorporated into the operational capabilities of the Shared Wireless Broadband Network.

(5) QoS shall be considered to be the full class of mechanisms that are found at multiple IP layers in the network (both radio access network and core), and that provision and apply priority for IP packet based traffic.

(6) The assignment of network resources shall enable user or service priority, or both, in addition to the QoS requirements of the application.

(7) The Shared Wireless Broadband Network shall support multiple IP data services and application session flows between a user device and network, where each flow may have a different QoS requirement and priority level.

(8) If network resources are not available to meet a resource reservation request, the Shared Wireless Broadband Network shall have the ability to provide a new QoS consistent with the limited network resources.

(f) Operational capabilities to support public safety systems as specified below:

(1) The Shared Wireless Broadband Network shall provide access for all applications and services, hosted applications and services, and third party public safety applications and services specified in the Network Sharing Agreement. The Public Safety Broadband Licensee shall give consideration of particular applications to the overall impact on overall system performance.

(2) The Shared Wireless Broadband Network shall provide for the application data rates shown in Table 1.

(3) The Shared Wireless Broadband Network shall be designed to provide edge of cell data rates shown in Table 2. Typical data rates should be designed for at least 1 Mbs downlink and 600 kbps uplink. The data link speeds for public safety users must be at least as fast as the best data speeds provided to commercial users of the Shared Wireless Broadband Network.

(4) The Shared Wireless Broadband Network must provide indoor coverage for VoIP consistent with the propagation parameters shown in Table 3.

(5) For purposes of these Tables 2 and 3, the following definitions apply in terms of population per square mile: dense urban: 15,000 people or greater;

urban 2,500–14,999; suburban 200–2,499; and rural 0–199.

(6) The data rates in this section are design objectives and are not to be applied for a particular device, time or location.

(7) Signal coverage, propagation, and capacity parameters in Table 2 and 3 shall be reviewed by the Upper 700 MHz D Block licensee and the Public Safety Broadband Licensee no less than every four years to assess the impact of benefits from technology evolution and general improvement in network coverage consistent with paragraph (a)(2) of this section.

TABLE 1 TO § 90.1405—APPLICATIONS AND SERVICES QOS ATTRIBUTES

Application/service	Description	Data rate
File transfer	FTP and general data upload /download	Greater than 256kb/s.
Email	Both Web based and Entity Hosted E-Mail Service	Less than 16kb/s.
Web browsing	Intranet, extranet, and internet	Greater than 32kb/s.
Mobile voice	Equivalent to current commercial mobile voice	Minimum 15kb/s.
Push to talk (PTT) voice	Commercial grade PTT / PoC offerings with group call, alerting, and monitoring capability.	4–25kb/s.
Indoor video	Video that is transmitted from inside a building	20–384kb/sF.
Outdoor video	Video that is transmitted from the street	32–384kb/s.
Location services	All location based services	Less than 16kb/s.
Database transactions	Remote databases access both under the entities' direct control as well as databases that are local.	Less than 32kb/s.
Messaging	Instant messaging, SMS, and Push to X services	Less than 16kb/s.
Network Operations data	Network operational and maintenance data including over the air programming and remote client management.	Less than 32kb/s.
Dispatch data	Data as it relates to computer aided dispatching.	Less than 64kb/s.
Generic traffic	General category for traffic that does not fall within any of the categories described above, and that generates less than 64kb of data per second.	Less than 64kb/s.
Telemetry	Remote measurement and reporting of information for radio devices, vehicles, and sensor data.	70–120 kb/s.
Virtual Private Networking	Secure remote access to entity LAN and WAN environments	64—256 kb/s.

TABLE 2 TO § 90.1405—DATA PROPAGATION AND CAPACITY PARAMETERS

Morphology	Cell coverage area reliability	Sector loading factor	Forward link throughput on-street single user average cell-edge	Reverse link throughput on-street single user average cell-edge
Dense Urban	95%	70%	256 kbps	256 kbps
Urban	95%	70%	256 kbps	256 kbps
Suburban	95%	70%	128 kbps	128 kbps
Rural	95%	70%	128 kbps	128 kbps
Highway	95%	70%	64 kbps	64 kbps

TABLE 3 TO § 90.1405—VOICE PROPAGATION AND CAPACITY PARAMETERS

Morphology	In-building penetration margin	Cell coverage area reliability	Sector loading factor
Dense Urban	22 dB	95%	70%
Urban	19 dB	95%	70%
Suburban	13 dB	95%	70%
Rural	6 dB	95%	70%
Highway	6 dB	95%	70%

17. Section 90.1407 is amended by adding paragraphs (d) and (e) to read as follows:

§ 90.1407 Spectrum use in the network.

* * * * *

(d) The Upper 700 MHz D Block licensee may construct and operate the Shared Wireless Broadband Network using both the 758–763 MHz and 788–793 MHz bands as well as the 763–768 MHz and 793–798 MHz bands as a combined resource. If the Upper 700 MHz D Block licensee chooses to operate the spectrum as a combined resource, however, 50 percent of the capacity available from the combined 20 megahertz of spectrum must be assigned to public safety users and the other 50 percent must be assigned to the commercial users, consistent with the respective capacity and priority rights of the Upper 700 MHz D Block license and the Public Safety Broadband License and with rules in this Part.

(e) *Emergency Priority Access.* (1) The Upper 700 MHz D Block licensee must provide public safety users priority access to, but not preemptive use of, up to 40 percent of the commercial spectrum capacity (two megahertz in each of the uplink and downlink blocks), assuming the full public safety broadband block spectrum capacity is being used, for an aggregate total of 14 megahertz of overall network capacity in the following circumstances:

(i) The President or a state governor declares a state of emergency.

(ii) The President or a state governor issues an evacuation order impacting areas of significant scope.

(iii) The national or airline sector threat level is set to red.

(2) The D Block licensee must provide priority access to, but not preemptive use of, up to 20 percent of the commercial spectrum capacity (one megahertz in each of the uplink and downlink blocks) in the following circumstances:

(i) The National Weather Service issues a hurricane or flood warning likely to impact a significant area.

(ii) The occurrence of other major natural disasters, such as tornado strikes, tsunamis, earthquakes, or pandemics.

(iii) The occurrence of manmade disasters or acts of terrorism of a substantial nature.

(iv) The occurrence of power outages of significant duration and scope.

(v) The national threat level is set to orange.

(3) The Upper 700 MHz D Block licensee must assign the next available channel to the requesting public safety user over a commercial user—*i.e.*, the public safety user would be placed at the top of the queue—and should not preempt a commercial call in progress. Emergency priority access is limited to the time and geographic scope of the emergency.

(4) To trigger emergency priority access, the Public Safety Broadband Licensee must request, on behalf of the impacted public safety agencies, that the Upper 700 MHz D Block licensee provide such access. Emergency priority access requests initiated by the Public Safety Broadband Licensee will cover a 24-hour time period, and must be reinitiated by the Public Safety Broadband Licensee for each 24-hour time period thereafter that the priority access is required.

(5) In the event that the Upper 700 MHz D Block licensee and the Public Safety Broadband Licensee do not agree that an emergency has taken place, the Public Safety Broadband Licensee may request the Defense Commissioner to resolve the dispute.

18. Section 90.1410 is amended by revising paragraphs (c), (d), (f), (g), and (j), and adding paragraphs (k) through (n), to read as follows:

§ 90.1410 Network sharing agreement.

* * * * *

(c) The definition of ''emergency'' for purposes of emergency priority access, as described in § 90.1407(e).

(d) All service fees to be imposed for services to public safety, including fees for normal network service, interconnected service, and fees for priority access to the D Block spectrum in an emergency.

* * * * *

(f) The right of the Public Safety Broadband Licensee to determine and approve the specifications of public safety equipment used on the network and the right to purchase its own subscriber equipment from any vendor it chooses, to the extent such specifications and equipment are consistent with reasonable network management requirements.

(g) The terms, conditions, and timeframes pursuant to which the Upper 700 MHz D Block licensee must make available at least one handset suitable for public safety use that includes an integrated satellite solution.

* * * * *

(j) To the extent that interoperability arrangements between the Upper 700 MHz D Block licensee and the Public Safety Broadband Licensee are required under § 90.1405(a)(1), the terms and conditions of the arrangement, including the terms and conditions under which roaming will be provided to public safety users of other Shared Wireless Broadband Networks.

(k) The terms of a standard agreement under which public safety networks operating in other frequency bands may connect to the Shared Wireless Broadband Network pursuant to and in accordance with § 90.1405(a)(1).

(l) Terms regarding the establishment of access priorities, service levels and related requirements, and approval of public safety applications and end user devices, by the Public Safety Broadband Licensee.

(m) A process for forecasting demand for public safety usage.

(n) A contract term, not to exceed a 15 year period that coincides with the terms of the Upper 700 MHz D Block license and the Public Safety Broadband License.

19. Section 90.1415 is amended by revising paragraphs (a), (b), (c), (f)(4), and (g) to read as follows:

§ 90.1415 Establishment, execution, and application of the network sharing agreement.

* * * * *

(a) *Approval of NSA as pre-condition for granting the Upper 700 MHz D Block License.* The Commission shall not grant an Upper 700 MHz D Block license until the winning bidder for the subject Upper 700 MHz D Block license has negotiated an NSA and such other agreements as the Commission may require or allow with the Public Safety Broadband Licensee, and the NSA and related agreements, or documents have been approved by the Commission and executed by the required parties. Parties to the NSA must also include the Upper 700 MHz D Block licensee, a Network Assets Holder, and an Operating Company, as these entities are defined in § 27.4 of this chapter.

(b) *Requirement of negotiation.* Negotiation of an NSA between a winning bidder for an Upper 700 MHz D Block license and the Public Safety Broadband Licensee must commence by the date the winning bidder files its long form application or the date on which the Commission designates the Public Safety Broadband Licensee, whichever is later, and must conclude within six months of that date. Parties to this negotiation are required to negotiate in good faith. Two members of the Commission staff, one from the Wireless Telecommunications Bureau and one from the Public Safety and Homeland Security Bureau, shall be present at all stages of the negotiation as neutral observers.

(c) *Reporting requirements.* A winning bidder for the Upper 700 MHz D Block license must file a report with the Commission within 10 business days of the commencement of the negotiation period certifying that active and good faith negotiations have begun, providing the date on which they commenced, and providing a schedule of the initial dates on which the parties intend to meet for active negotiations, covering at a minimum the first 30-day period. Beginning three months from the triggering of the six-month negotiation period, the winning bidder for a Upper 700 MHz D Block license and the Public Safety Broadband Licensee must jointly provide detailed reports, on a monthly basis and subject to a request for confidential treatment, on the progress of the negotiations throughout the remainder of the negotiations. These reports must include descriptions of all material issues that the parties have yet to resolve.

* * * * *

(f) * * *

(4) Determining that no resolution of the disputed issues can be made consistent with the public interest.

(g) *Lack of a Commission-approved NSA and such other agreements as the Commission may require or allow.* If a winning bidder chooses not to execute a Commission-approved NSA or such other agreements as the Commission may require or allow within 10 business days of Commission approval, the winning bidder's long-form application will be dismissed, the winning bidder will be deemed to have defaulted under § 1.2109(c) of this chapter, and the winning bidder will be liable for the

default payment specified in § 1.2104(g)(2) of this chapter and § 27.501(b)(3). In all other circumstances in which the parties do not submit executed copies of a Commission-approved NSA and such other agreements within the time permitted by this section, the winning bidder's long-form application will be dismissed and any payments made toward the winning bid will be returned to the payor(s) of record.

20. Section 90.1430 is amended by revising paragraph (b) introductory text and paragraph (b)(4) to read as follows:

§ 90.1430 Local public safety build-out and operation.

* * * * *

(b) *Rights to early build-out in areas with a build-out commitment.* In an area where the Upper 700 MHz D Block licensee has committed, in the NSA, to build out by a certain date, a public safety entity may, with the pre-approval of the Public Safety Broadband Licensee and the Upper 700 MHz D Block licensee, and subject to the requirements set forth herein, construct a broadband network in that area at its own expense so long as the network is capable of operating on the Shared Wireless Broadband Network and meets all the requirements and specifications of the network required under the NSA.

* * * * *

(4) *Attribution of early build-out to applicable construction benchmarks.* Upon completion of construction, transfer of ownership to the Upper 700 MHz D Block licensee, and compensation as required herein, if applicable, the Upper 700 MHz D Block licensee may include the network constructed pursuant to the early build-out provisions herein for purposes of determining whether it has met its build-out benchmarks and the build-out requirements of the NSA.

* * * * *

21. Section 90.1440 is amended by adding paragraph (c) to read as follows:

§ 90.1440 Reporting obligations.

* * * * *

(c) The Upper 700 MHz D Block licensee must provide regular monthly reports on network usage to the Public Safety Broadband Licensee.

Note: The following appendices will not appear in the code of Federal Regulations:

Appendix A

Geographical Boundaries of the 58 Public Safety Regions

Number	States, counties and territories included in regions
1	Alabama.
2	Alaska.
3	Arizona.
4	Arkansas.
5	California—South (to the northernmost borders of San Luis Obispo, Kern, and San Bernardino Counties).
6	California—North (that part of California not included in California-South).
7	Colorado.
8	*New York-Metropolitan*—New York: Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, Dutchess, and Westchester Counties; New Jersey: Bergen, Essex, Hudson, Morris, Passaic, Sussex, Union, Warren, Middlesex, Somerset, Hunterdon, Mercer, and Monmouth Counties.
9	Florida.
10	Georgia.
11	Hawaii.
12	Idaho.
13	Illinois (all except area in Region 54).
14	Indiana (all except area in Region 54).
15	Iowa.
16	Kansas.
17	Kentucky.
18	Louisiana.
19	*New England*—Maine; New Hampshire; Vermont; Massachusetts; Rhode Island; Connecticut.
20	Maryland; Washington, D.C.; Virginia—Northern (Arlington, Fairfax, Fauquier, Loudoun, Prince William and Stafford Counties; and Alexandria, Fairfax, Falls Church, Manassas and Manassas Park Cities).
21	Michigan.
22	Minnesota.
23	Mississippi.
24	Missouri.
25	Montana.
26	Nebraska.
27	Nevada.
28	New Jersey (except for counties included in the New York—Metropolitan, Region 8, above) Pennsylvania (Bucks, Chester, Montgomery, Philadelphia, Berks, Delaware, Lehigh, Northampton, Bradford, Carbon, Columbia, Dauphin, Lackawanna, Lancaster, Lebanon, Luzerne, Lycoming, Monroe, Montour, Northumberland, Pike, Schuylkill, Sullivan, Susquehanna, Tioga, Wayne, Wyoming and York Counties); Delaware.
29	New Mexico.
30	New York—Albany (all except area in New York—Metropolitan, Region 8, and New York—Buffalo, Region 55).
31	North Carolina.
32	North Dakota.
33	Ohio.
34	Oklahoma.
35	Oregon.
36	Pennsylvania (all except area in Region 28, above).
37	South Carolina.
38	South Dakota.
39	Tennessee.
40	Texas—Dallas (including the counties of Cooke, Grayson, Fannin, Lamar, Red River, Bowie, Wise, Denton, Collin, Hunt, Delta, Hopkins, Franklin, Titus, Morris, Cass, Tarrant, Dallas, Palo Pinto, Parker, Rockwall, Kaufman, Rains, VanZandt, Wood, Smith, Camp, Upshur, Gregg, Marion, Harrison, Panola, Rusk, Cherokee, Anderson, Henderson, Navarro, Ellis, Johnson, Hood, Somervell and Erath).

Number	States, counties and territories included in regions
41	Utah.
42	Virginia (all except area in Region 20, above).
43	Washington.
44	West Virginia.
45	Wisconsin (all except area in Region 54).
46	Wyoming.
47	Puerto Rico.
48	U.S. Virgin Islands.
49	Texas—Austin (including the counties of Bosque, Hill, Hamilton, McLennan, Limestone, Freestone, Mills, Coryell, Falls, Robertson, Leon, San Saba, Lampasas, Bell, Milam, Brazos, Madison, Grimes, Llano, Burnet, Williamson, Burleson, Lee, Washington, Blanco, Hays, Travis, Caldwell, Bastrop, and Fayette).
50	Texas—El Paso (including the counties of Knox, Kent, Stonewall, Haskell, Throckmorton, Gaines, Dawson, Borden, Scurry, Fisher, Jones, Shackelford, Stephens, Andrews, Martin, Howard, Mitchell, Nolan, Taylor, Callahan, Eastland, Loving, Winkler, Ector, Midland, Glasscock, Sterling, Coke, Runnels, Coleman, Brown, Comanche, Culberson, Reeves, Ward, Crane, Upton, Reagan, Irion, Tom Green, Concho, McCulloch, Jeff Davis, Hudspeth, El Paso, Pecos, Crockett, Schleicher, Menard, Mason, Presidio, Brewster, Terrell, Sutton, and Kimble).
51	Texas—Houston (including the counties of Shelby, Nacogdoches, San Augustine, Sabine, Houston, Trinity, Angelina, Walker, San Jacinto, Polk, Tyler, Jasper, Newton, Montgomery, Liberty, Hardin, Orange, Waller, Harris, Chambers, Jefferson, Galveston, Brazoria, Fort Bend, Austin, Colorado, Wharton, and Matagorda).
52	Texas—Lubbock (including the counties of Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Grey, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Hardeman, Foard, Wilbarger, Witchita, Clay, Montague, Jack, Young, Archer, Baylor, King, Dickens, Crosby, Lubbock, Kockley, Cochran, Yoakum, Terry, Lynn, and Garza).
53	Texas—San Antonio (including the counties of Val Verde, Edwards, Kerr, Gillespie, Real, Bandera, Kendall, Kinney, Uvalde, Medina, Bexar, Comal, Guadalupe, Gonzales, Lavaca, Dewitt, Karnes, Wilson, Atascosa, Frio, Zavala, Maverick, Dimmit, LaSalle, McMullen, Live Oak, Bee, Goliad, Victoria, Jackson, Calhoun, Refugio, Aransas, San Patricio, Nueces, Jim Wells, Duval, Webb, Kleberg, Kenedy, Brooks, Jim Hogg, Zapata, Starr, Hidalgo, Willacy, and Cameron).
54	Chicago—Metropolitan—Illinois: Winnebago, McHenry, Cook, Kane, Kendall, Grundy, Boone, Lake, DuPage, DeKalb, Will, and Kankakee Counties; Indiana: Lake, LaPorte, Jasper, Starke, St. Joseph, Porter, Newton, Pulaski, Marshall, and Elkart Counties; Wisconsin: Kenosha, Milwaukee, Washington, Dodge, Walworth, Jefferson, Racine, Ozaukee, Waukesha, Dane, and Rock Counties.
55	New York—Buffalo (including the counties of Niagara, Chemung, Schuyler, Seneca, Erie, Chautauqua, Cattaraugus, Allegany, Wyoming, Genesee, Orleans, Monroe, Livingston, Steuben, Ontario, Wayne, and Yates).
56	Guam and the Northern Mariana Islands.
57	American Samoa.
58	Gulf of Mexico.

Appendix B

PERFORMANCE TIERS BY PUBLIC SAFETY REGION

PSR	PSR name	Total pops*	Land area (SqM)*	Density	Coverage required at end of 15th year of license term
8	New York—Metropolitan	19,092,214	9,841	1,940.1	Tier 1: 98% coverage required for PSRs with a population density equal to or greater than 500 pops per square mile.
47	Puerto Rico	3,808,610	3,425	1,112.1	
48	U.S. Virgin Islands	108,612	134	810.5	
57	American Samoa	57,291	77	744.0	
54	Chicago—Metropolitan	12,685,330	17,100	741.8	
20	Maryland; Washington, DC; Virginia—Northern	7,831,327	12,070	648.8	
56	Guam and the Northern Mariana Islands	224,026	389	575.9	
28	New Jersey, Pennsylvania, Delaware	10,526,480	22,729	463.1	Tier 2: 94% coverage required for PSRs with a population density equal to or greater than 100 pops per square mile and less than 500 pops per square mile.
5	California—South	20,637,512	56,512	365.2	
9	Florida	15,982,378	53,927	296.4	
33	Ohio	11,353,140	40,948	277.3	
55	New York—Buffalo	2,852,351	11,780	242.1	
51	Texas—Houston	5,618,958	25,166	223.3	
19	Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut.	13,922,517	62,809	221.7	
40	Texas—Dallas	6,503,125	30,589	212.6	
11	Hawaii	1,211,537	6,423	188.6	

PERFORMANCE TIERS BY PUBLIC SAFETY REGION—Continued

PSR	PSR name	Total pops*	Land area (SqM)*	Density	Coverage required at end of 15th year of license term
21	Michigan	9,938,444	56,804	175.0	
36	Pennsylvania	4,801,690	27,672	173.5	
31	North Carolina	8,049,313	48,711	165.2	
14	Indiana	4,763,619	31,283	152.3	
10	Georgia	8,186,453	57,906	141.4	
39	Tennessee	5,689,283	41,217	138.0	
42	Virginia	5,115,733	37,360	136.9	
37	South Carolina	4,012,012	30,109	133.2	
6	California—North	13,234,136	99,447	133.1	
30	New York—Albany	3,182,726	29,379	108.3	
18	Louisiana	4,468,976	43,562	102.6	
17	Kentucky	4,041,769	39,728	101.7	
49	Texas—Austin	2,254,226	24,263	92.9	Tier 3: 90% coverage required for PSRs with a population density less than 100 pops per. square mile.
43	Washington	5,894,121	66,544	88.6	
1	Alabama	4,447,100	50,744	87.6	
24	Missouri	5,595,211	68,886	81.2	
13	Illinois	3,722,488	49,049	75.9	
44	West Virginia	1,808,344	24,078	75.1	
53	Texas—San Antonio	3,916,309	53,562	73.1	
22	Minnesota	4,919,479	79,610	61.8	
23	Mississippi	2,844,658	46,907	60.6	
45	Wisconsin	2,692,016	48,327	55.7	
15	Iowa	2,926,324	55,869	52.4	
4	Arkansas	2,673,400	52,068	51.3	
34	Oklahoma	3,450,654	68,667	50.3	
3	Arizona	5,130,632	113,635	45.2	
7	Colorado	4,301,261	103,718	41.5	
35	Oregon	3,421,399	95,997	35.6	
16	Kansas	2,688,418	81,815	32.9	
41	Utah	2,233,169	82,144	27.2	
26	Nebraska	1,711,263	76,872	22.3	
50	Texas—El Paso	1,472,545	72,617	20.3	
52	Texas—Lubbock	1,086,657	55,600	19.5	
27	Nevada	1,998,257	109,826	18.2	
12	Idaho	1,293,953	82,747	15.6	
29	New Mexico	1,819,046	121,356	15.0	
38	South Dakota	754,844	75,885	9.9	
32	North Dakota	642,200	68,976	9.3	
25	Montana	902,195	145,552	6.2	
46	Wyoming	493,782	97,100	5.1	
2	Alaska	626,932	571,951	1.1	
58	Gulf of Mexico	.....	250,922	.....	

*Based on 2000 U.S. Census Data.

The first 55 Public Safety Regions are defined in Public Safety 700 MHz Band—General Use Channels: Approval of Changes to Regional Planning Boundaries of Connecticut and Michigan, *Public Notice,* 16 FCC Rcd 16359 (2001).

Appendix C

Relocation Costs By 700 MHz RPC Region

Region	Amount
Region 3 (Arizona)	$1,610,100.00
Region 4 (Arkansas)	1,124,900.00
Region 7 (Colorado)	2,276,800.00
Region 11 (Hawaii)	53,000.00
Region 12 (Idaho)	723,200.00
Region 13 (Illinois) [982]	2,885,800.00
Region 17 (Kentucky)	2,472,600.00
Region 18 (Louisiana)	3,979,700.00
Region 19 (New England) [983]	414,400.00
Region 22 (Minnesota)	186,000.00
Region 23 (Mississippi)	401,000.00
Region 24 (Missouri)	244,100.00
Region 26 (Nebraska)	366,400.00
Region 27 (Nevada)	783,000.00
Region 30 (New York—Albany) [984]	78,100.00
Region 31 (North Carolina)	826,200.00
Region 33 (Ohio)	3,893,000.00
Region 35 (Oregon)	7,200.00
Region 39 (Tennessee)	231,100.00
Region 41 (Utah)	204,100.00
Region 42 (Virginia) [985]	2,614,800.00
Region 43 (Washington)	209,700.00
Region 49 (Texas—Austin)	63,800.00
Region 51 (Texas—Houston)	1,034,600.00
Total Relocation Costs	26,683,600.00

Appendix D

NSA Term Sheet

Draft Network Sharing Agreement (NSA) Term Sheet Public/Private Partnership

The following terms are to be incorporated into all Network Sharing Agreements between each D Block licensee and the Public Safety Broadband Licensee, to effectuate the 700 MHz public/private partnership.

Term of Agreement

• The term of the Network Sharing Agreement is 15 years. Extension of the term of the NSA or amendments to any of the major terms must be submitted to the Federal Communications Commission for approval.

Spectrum Use

The D Block licensee(s) must provide public safety users with primary access to 10 megahertz of spectrum capacity at all times.

During Emergencies

• The D Block licensee must provide public safety users emergency access to the D Block commercial capacity only in the event of an ''emergency,'' which is defined as follows:

• The declaration of a state of emergency by the President or a state governor.

• The issuance of an evacuation order by the President or a state governor impacting areas of significant scope.

• The issuance by the National Weather Service of a hurricane or flood warning likely to impact a significant area.

• The occurrence of other major natural disasters, such as tornado strikes, tsunamis, earthquakes, or pandemics.

• The occurrence of manmade disasters or acts of terrorism of a substantial nature.

• The occurrence of power outages of significant duration and scope.

• The elevation of the national threat level to either orange or red for any portion of the United States, or the elevation of the threat level in the airline sector or any portion thereof, to red.

• The D Block licensee(s) must provide public safety users priority access to, but not preemptive use of, up to 40 percent of the commercial D Block spectrum capacity (*i.e.*, 2 megahertz in each of the uplink and downlink blocks), assuming the full public safety broadband block spectrum capacity is being used, for an aggregate total of 14 megahertz of overall network capacity in the following circumstances: The President or a state governor declares a state of emergency; the President or a state governor issues an evacuation order impacting areas of significant scope; or the national or airline sector threat is set to red. In these circumstances, the D Block licensee(s) must assign the next available channel to the requesting public safety user over a commercial user—*i.e.*, the public safety user would be placed at the top of the queue—and would not preempt a commercial call in progress. The right to priority access must be limited to the time and geographic scope of the emergency.

• The D Block licensee(s) must provide priority access to, but not preemptive use of, up to 20 percent of the commercial spectrum capacity (*i.e.*, 1 megahertz in each of the uplink and downlink blocks) in the following circumstances: The issuance by the National Weather Service of a hurricane or flood warning likely to impact a significant area; the occurrence of other major natural disasters, such as tornado strikes, tsunamis, earthquakes, or pandemics; the occurrence of manmade disasters or acts of terrorism of a substantial nature; the occurrence of power outages of significant duration and scope; or the elevation of the national threat level to orange for any portion of the United States. The right to priority access must be limited to the time and geographic scope of the emergency.

• To trigger priority access, the PSBL must request, on behalf of the impacted public safety agencies, that the D Block licensee provide such access. Priority access requests initiated by the PSBL will cover a 24-hour

[982] Illinois' narrowband certification for Region 13 also includes narrowband facilities in Region 54 (Chicago Metro area).

[983] Region 19 (New England) includes six states: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut.

[984] New York's narrowband certification for Region 30 also includes narrowband facilities in Region 55 (New York—Buffalo) and Region 8 (New York City Metro area).

[985] Virginia's narrowband certification for Region 42 also includes narrowband facilities in Region 20 (Northern Virginia/DC Metro).

time period, and must be reinitiated by the PSBL for each 24-hour time period thereafter that the priority access is required.

• In the event that the D Block licensee and the PSBL do not agree that an emergency has taken place, the PSBL may ask the Defense Commissioner to resolve the dispute.

Performance Requirements

• D Block licensee(s) are required to provide signal coverage and offer service to at least 40 percent of the population in each PSR by the end of the fourth year, and 75 percent by the end of the tenth year. D Block licensee(s) will be required to meet the following final benchmarks 15 years after the issuance of their license(s):

• PSRs with a population density less than 100 people per square mile, the licensee(s) will be required to provide signal coverage and offer service to at least 90 percent of the population by the end of the fifteenth year;

• PSRs with a population density equal to or greater than 100 people per square mile and less than 500 people per square mile, the licensee(s) will be required to provide signal coverage and offer service to at least 94 percent of the population by the end of the fifteenth year; and

• PSRs with a population density equal to or greater than 500 people per square mile, the licensee(s) will be required to provide signal coverage and offer service to at least 98 percent of the population by the end of the fifteenth year.

• These population coverage requirements must be met on a PSR basis, and licensees will have to use the most recently available U.S. Census data at the time of measurement to meet the requirements.

• To the extent that the D Block licensee chooses to provide terrestrial commercial services to population levels in excess of the relevant benchmarks, the D Block licensee must make the same level of coverage and service available to public safety entities.

• In addition to the required population benchmarks, D Block licensee(s) must provide service to major highways, interstates, and incorporated communities with populations greater than 3,000 no later than the end of the D Block license term. To the extent that coverage of major highways, interstates and incorporated communities with populations in excess of 3,000 requires the D Block licensee to extend coverage beyond what is required to meet its population benchmarks, coverage can be provided through non-terrestrial means, such as MSS or other such technologies.

• The D Block licensee and the Public Safety Broadband Licensee must reach agreement on a detailed build-out schedule that is consistent with the performance benchmarks. The build-out schedule must identify the specific areas of the country that will be built out and the extent to which interstates within the D Block licensee's service area will be covered by each of the performance deadlines. The D Block licensee may determine, in consultation with the Public Safety Broadband Licensee, which particular areas of the country will be built out by each deadline.

• The D Block licensee may modify its population-based construction benchmarks where the D Block licensee and the Public Safety Broadband Licensee reach agreement and the Commission gives its prior approval for a modification. No increase in the performance requirements will be permitted unless it is acceptable to the D Block licensee.

• For the D Block licensee for the Gulf of Mexico, the population-based benchmarks shall be inapplicable, and the D Block licensee for the Gulf of Mexico and the Public Safety Broadband Licensee may flexibly negotiate a coverage and service plan for public safety use for that region as needed.

Role and Responsibilities of the D Block Licensee

• The D Block licensee has exclusive responsibility for all traditional network service provider operations, including customer acquisition, network monitoring and management, operational support and billing systems, and customer care, in connection with services provided to public safety users.

• The D Block licensee is subject to monthly network usage reporting requirements that will enable monitoring of its operations by the Commission and the PSBL.

• The D Block Licensee will allow the Public Safety Broadband Licensee to determine and approve the specifications of public safety equipment used on the network. The public safety subscribers will have right to purchase their own subscriber equipments and applications from any vendor they choose, to the extent such specifications, equipments, and applications are consistent with reasonable network management requirements and compatible with the network.

• If the D Block licensee chooses to adopt a wholesale-only model with respect to the D Block spectrum, it must ensure, though arrangements such as the creation of a subsidiary or by contracting with a third party, that retail service will be provided to public safety entities that complies with the Commission's regulatory requirements. This arrangement to provide service to public safety should be made part of the NSA.

Role and Responsibilities of the Public Safety Broadband Licensee

The Public Safety Broadband Licensee's assigned duties will be as follows:

• General administration of access to the 763–768 MHz and 793–798 MHz bands by individual public safety entities, as facilitated through the establishment of priority access, service levels and related requirements negotiated into the NSA, approving public safety applications and end user devices, and related frequency coordination duties.

• Regular interaction with and promotion of the needs of the public safety entities with respect to accessing and use of the national public safety broadband network, within the technical and operational confines of the NSA.

• Interfacing with equipment vendors on its own or in partnership with the D Block licensee, as appropriate, to achieve and pass on the benefits of economies of scale concerning network and subscriber equipment and applications.

• Sole authority, which cannot be waived in the NSA, to approve, in consultation with the D Block licensee, equipment and applications for use by public safety entities on the public safety broadband network.

• Responsibility to establish a means to authorize and authenticate public safety users. The Public Safety Broadband Licensee may accomplish this by establishing its own system that would accomplish these functions or defining parameters that are compatible with commercial technology and can be easily implemented by the D Block Licensee.

• Responsibility to facilitate negotiations between the D Block license winner and local and state entities to build out local and state-owned lands.

• Coordination of stations operating on 700 MHz public safety broadband spectrum with 700 MHz public safety narrowband stations, including management of the internal public safety guard band.

• Oversight and implementation of the relocation of narrowband public safety operations in channels 63 and 68, and the upper 1 megahertz of channels 64 and 69.

• Exercise of sole discretion, pursuant to Section 2.103 of the Commission's rules, whether to permit Federal public safety agency use of the public safety broadband spectrum, with any such use subject to the terms and conditions of the NSA.

• Responsibility for reviewing and approving requests for early construction and operation of local public safety broadband networks on the 700 MHz public safety broadband spectrum in areas with and without a preexisting build-out commitment in the NSA, pursuant to the procedures and requirements outlined for such waivers as described in 47 CFR 90.1430.

• Responsibility for reviewing and approving requests for waiver submitted by public safety entities to conduct wideband operations pursuant to the procedures and restrictions in connection with such waivers as described in 47 CFR 90.1432.

Public Safety Network Service Fees

• The NSA must include a schedule of fees for public safety access to broadband network services.

• Public safety users of the D Block public safety spectrum will be charged a base rate of $[—.—] per user per month.

• The initial fixed rates in the NSA will sunset at the end of the fourth year of the D Block licensee's license term. After the sunset, applicable rates will be negotiated based on fee schedules developed by the General Services Administration for government users of the commercial spectrum.

Roaming Arrangement

• Each regional D Block licensee must public safety users of all other 700 MHz public safety regional networks with the ability to roam on its network.

• The NSA should further specify the relevant terms and conditions under which roaming will be provided.

Dispute Resolution Process

• The Commission may resolve any impasse between the parties to the NSA, including, should the Commission find it in the public interest, requiring the parties to accept specified terms resolving the dispute. The Commission's resolution will be final.

• In resolving any disputes between a winning D Block bidder and the PSBL with respect to the terms of the NSA, the Commission will use its discretion to determine how best to take into account the winning D Block bidder's business plan, as well as the requirements of public safety users, when mandating a resolution.

Safeguards for Protection of Public Safety Service

• The D Block licensee must provide to the Public Safety Broadband Licensee monthly network usage statistics.

• The D Block licensee may not discontinue service to public safety entities without the Commission's approval.

• The parties must jointly file quarterly reports with the Commission. These reports must include detailed information on the areas where broadband service has been deployed, how the specific requirements of public safety are being met, audited financial statements, which public safety entities (*e.g.*, police, fire departments) are using the broadband network in each area of operation; what types of applications (*e.g.*, voice, data, video) are in use in each area of operation to the extent known; and the number of declared emergencies in each area of operation.

Funding of the PSBL Through the D Block Licensee

• The Public Safety Broadband Licensee must annually create and submit for FCC approval a budget for its administrative and operational expenses. The Public Safety Broadband Licensee also must have an annual audit conducted by an external, independent auditor. The proposed annual budget to be submitted by the Public Safety Broadband Licensee will provide the Commission with an ability to ensure that the Public Safety Broadband Licensee is acting in a fiscally responsible manner and not engaging in activities that exceed the scope of its prescribed roles and responsibilities.

• The Public Safety Broadband Licensee must submit a full financial accounting on a quarterly basis.

• The D Block licensee must make an annual payment to the Public Safety Broadband Licensee of the sum total of $5 million per year in the aggregate in consideration for the D Block licensee's leased access on a secondary basis to the public safety broadband spectrum.

○ In the event that the D Block is licensed on a regional basis, the Commission will specify after the close of the auction the annual payments required for each license won at auction, such that the total $5 million in annual payments to the Public Safety Broadband Licensee is apportioned on a per region basis, based upon total pops per region.

• The annual payment funds will be placed into an escrow account managed by an unaffiliated third party, such as a major commercial financial institution, for the benefit of the Public Safety Broadband Licensee. The Public Safety Broadband Licensee must seek approval of its selected escrow account manager from the Chief, PSHSB. The Public Safety Broadband Licensee can draw funds on this account to cover its annual operating and administrative expenses in a manner consistent with its submitted annual budget for that fiscal year. The entirety of the Public Safety Broadband Licensee's annual operating budget shall be based on these annual payments.

• To the extent that the Public Safety Broadband Licensee's actual operating expenses for a given fiscal year turn out to be less than its proposed budget, such that there are excess funds left over at the end of that fiscal year from the annual payment(s) made by the D Block licensee(s) at the beginning of that year, those excess funds may be applied towards the Public Safety Broadband Licensee's funding of administrative or operational expenses for the following fiscal year, or to fund secondary activities, such as the purchase of equipment for the benefit of individual public safety agencies.

• The Public Safety Broadband Licensee is not permitted to: charge a separate lease fee to the D Block licensee(s) for their use of the public safety broadband spectrum or obtain loans or financing from any other sources.

Technical Requirements

• *Interoperability:*

○ The network or networks are required to use the same air interface and provide voice, video, and data capabilities that are interoperable across agencies, jurisdictions, and geographic areas. Interoperable means that the technology, equipment, applications, and frequencies employed will allow all participating public safety entities, whether on the same network or different regional 700 MHz public safety broadband networks, to communicate with one another.

○ All networks are required to support roaming of public safety users from other networks.

○ *Satellite Support:* D Block licensees must also ensure the availability to PS users in their area at least one handset with an integrated satellite solution.

• *Greater Technical Requirements Can Be Purchased:* If a particular public safety agency wishes, for example, greater capabilities than required by the Commission's rules or this NSA, the Public Safety Broadband Licensee may negotiate on its behalf for such improvements, provided the public safety agency provides the requisite financing.

Appendix E

Proposed Minimum Opening Bids

NATIONWIDE LICENSE

Area	Population		MHz		Minimum opening bid
Nationwide	285,620,445		10		$750,000,000

REGIONAL LICENSES

	PSR	Population	Population density/ square mile	Density category*	MHz	MHz*pops	$/MHz*pop	Minimum opening bid**
8	New York—Metropolitan	19,092,214	1,940.1	A	10	190,922,140	0.45	$86,335,000
5	California—South	20,637,512	365.2	B	10	206,375,120	0.30	62,215,000
54	Chicago—Metropolitan	12,685,330	741.8	A	10	126,853,300	0.45	57,363,000
9	Florida	15,982,378	296.4	B	10	159,823,780	0.30	48,182,000
19	Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut.	13,922,517	221.7	B	10	139,225,170	0.30	41,972,000
6	California—North	13,234,136	133.1	B	10	132,341,360	0.30	39,896,000
20	Maryland; Washington, DC; Virginia—Northern.	7,831,327	648.8	A	10	78,313,270	0.45	35,413,000
33	Ohio	11,353,140	277.3	B	10	113,531,400	0.30	34,226,000
28	New Jersey, Pennsylvania, Delaware	10,526,480	463.1	B	10	105,264,800	0.30	31,734,000
21	Michigan	9,938,444	175.0	B	10	99,384,440	0.30	29,961,000

REGIONAL LICENSES—Continued

	PSR	Population	Population density/ square mile	Density category*	MHz	MHz*pops	$/MHz*pop	Minimum opening bid**
10	Georgia	8,186,453	141.4	B	10	81,864,530	0.30	24,679,000
31	North Carolina	8,049,313	165.2	B	10	80,493,130	0.30	24,266,000
40	Texas—Dallas	6,503,125	212.6	B	10	65,031,250	0.30	19,605,000
39	Tennessee	5,689,283	138.0	B	10	56,892,830	0.30	17,151,000
51	Texas—Houston	5,618,958	223.3	B	10	56,189,580	0.30	16,939,000
42	Virginia	5,115,733	136.9	B	10	51,157,330	0.30	15,422,000
36	Pennsylvania	4,801,690	173.5	B	10	48,016,900	0.30	14,475,000
14	Indiana	4,763,619	152.3	B	10	47,636,190	0.30	14,361,000
18	Louisiana	4,468,976	102.6	B	10	44,689,760	0.30	13,472,000
17	Kentucky	4,041,769	101.7	B	10	40,417,690	0.30	12,185,000
37	South Carolina	4,012,012	133.2	B	10	40,120,120	0.30	12,095,000
30	New York—Albany	3,182,726	108.3	B	10	31,827,260	0.30	9,595,000
55	New York—Buffalo	2,852,351	242.1	B	10	28,523,510	0.30	8,599,000
43	Washington	5,894,121	88.6	C	10	58,941,210	0.10	5,923,000
24	Missouri	5,595,211	81.2	C	10	55,952,110	0.10	5,623,000
3	Arizona	5,130,632	45.2	C	10	51,306,320	0.10	5,156,000
22	Minnesota	4,919,479	61.8	C	10	49,194,790	0.10	4,944,000
1	Alabama	4,447,100	87.6	C	10	44,471,000	0.10	4,469,000
7	Colorado	4,301,261	41.5	C	10	43,012,610	0.10	4,322,000
53	Texas—San Antonio	3,916,309	73.1	C	10	39,163,090	0.10	3,935,000
13	Illinois	3,722,488	75.9	C	10	37,224,880	0.10	3,741,000
11	Hawaii	1,211,537	188.6	B	10	12,115,370	0.30	3,652,000
34	Oklahoma	3,450,654	50.3	C	10	34,506,540	0.10	3,468,000
35	Oregon	3,421,399	35.6	C	10	34,213,990	0.10	3,438,000
15	Iowa	2,926,324	52.4	C	10	29,263,240	0.10	2,941,000
23	Mississippi	2,844,658	60.6	C	10	28,446,580	0.10	2,859,000
45	Wisconsin	2,692,016	55.7	C	10	26,920,160	0.10	2,705,000
16	Kansas	2,688,418	32.9	C	10	26,884,180	0.10	2,702,000
4	Arkansas	2,673,400	51.3	C	10	26,734,000	0.10	2,686,000
49	Texas—Austin	2,254,226	92.9	C	10	22,542,260	0.10	2,265,000
41	Utah	2,233,169	27.2	C	10	22,331,690	0.10	2,244,000
27	Nevada	1,998,257	18.2	C	10	19,982,570	0.10	2,008,000
29	New Mexico	1,819,046	15.0	C	10	18,190,460	0.10	1,828,000
44	West Virginia	1,808,344	75.1	C	10	18,083,440	0.10	1,817,000
26	Nebraska	1,711,263	22.3	C	10	17,112,630	0.10	1,720,000
50	Texas—El Paso	1,472,545	20.3	C	10	14,725,450	0.10	1,480,000
12	Idaho	1,293,953	15.6	C	10	12,939,530	0.10	1,300,000
52	Texas—Lubbock	1,086,657	19.5	C	10	10,866,570	0.10	1,092,000
47	Puerto Rico	3,808,610	1,112.1	D	10	38,086,100	0.02	765,000
25	Montana	902,195	6.2	D	10	9,021,950	0.02	181,000
38	South Dakota	754,844	9.9	D	10	7,548,440	0.02	152,000
32	North Dakota	642,200	9.3	D	10	6,422,000	0.02	129,000
2	Alaska	626,932	1.1	D	10	6,269,320	0.02	126,000
46	Wyoming	493,782	5.1	D	10	4,937,820	0.02	99,000
56	Guam and the Northern Mariana Islands.	224,026	575.9	D	10	2,240,260	0.02	45,000
48	U.S.Virgin Islands	108,612	810.5	D	10	1,086,120	0.02	22,000
57	American Samoa	57,291	744.0	D	10	572,910	0.02	12,000
58	Gulf of Mexico	.....	N/A	N/A	10	0	N/A	10,000
		285,620,445						750,000,000

	Density categories*	$/MHz*pop
A ...	density ≥ 500	$0.45
B ...	100 ≤ density < 500	0.30
C ...	10 ≤ density < 100	0.10
D ...	density < 10	0.02

* Density Category D also includes PSRs 47, 48, 56, and 57 regardless of population density.

** The proposed minimum opening bids for the regional licenses were calculated using the $/MHz*pop for the corresponding density category, except as noted above. The resulting amounts totaled nearly $750 million. These amounts were then adjusted and rounded so that the total of the minimum opening bids for a set of regional licenses equals the proposed minimum opening bid for the nationwide license.

Appendix F

Comments and Reply Comments

List of Comments and Reply Comments In the 700 MHz Third FNPRM (WT Docket No. 06–150 and PS Docket 06–229)

This is a list of parties who filed comments and reply comments within the designated comment periods in this proceeding. The complete record in this proceeding is available in the Electronic Comment Filing System located at *http://www.fcc.gov/cgb/ecfs/.*

Comments

700 MHz Regional Planning Committee, Region 6 (Northern California) (RPC 6)

Ada County Sheriff's Office
Advanced Communications Technology, Inc. (ACT)
Alcatel-Lucent (ALU)
American Association of State Highway and Transportation Officials (AASHTO)
American Hospital Association (AHA)
Andrew M. Seybold (Seybold)
Association of Public-Safety Communications Officials-International, Inc. (APCO)
AT&T Inc. (AT&T)
Big Bend Telephone Company (Big Bend)
Bill Reimann (Reimann)
Capt V. M. Sanders (Sanders)
Carol Barta (Barta)
CDMA Development Group, Inc. (CDG)
Cellular South, Inc. (Cellular South)
Charles L. Jackson, Dorothy Robyn and Coleman Bazelon (Jackson, Robyn, Bazelon)
City and County of San Francisco (San Francisco)
City of Philadelphia (Philadelphia)
Claire Nilles (Nilles)
Coleman Bazelon (Bazelon)
ComCentric Inc. (ComCentric)
Commonwealth of Virginia (Virginia)
Consumer Electronics Association (CEA)
Council Tree Communications, Inc (Council Tree)
Coverage Co (Coverage Co)
Cox Communications, Inc. (Cox)
Craig T. Rowland (Rowland)
CTC Telcom, Inc. (CTC)
CTIA—The Wireless Association (CTIA)
David Wills (Wills)
District of Columbia (District)
Ericsson Inc (Ericsson)
Florida Region 9, Regional Planning Committee (Region 9 RPC)
GEOCommand, Inc. (GEOCommand)
Gerard Eads (Eads)
Google Inc. (Google)
Hypres, Inc. (Hypres)
Inmarsat plc (Inmarsat)
Interisle Consulting Group (Interisle)
International Association of Fire Fighters (IAFF)
International Municipal Signal Association, International Association of Fire Chiefs, Inc., Congressional Fire Services Institute, and Forestry Conservation Communications Association (IMSA *et al.*)
James Lencioni (Lencioni)
Jessica Scheeler (Scheeler)
Jon M. Peha (Peha)
Kennebec Telephone Company, Inc. (Kennebec)
Kentucky Wireless Interoperability Executive Committee (KWIEC)
Kevin Mann (Mann)
King County Washington Regional Communications Board (King County)
Leap Wireless International, Inc. (Leap Wireless)
Mayo Clinic (Mayo)
Mercatus Center at George Mason University (Mercatus)
MetroPCS Communications, Inc. (MetroPCS)
Michael Stiles (Stiles)
Mobile Satellite Users Association (MSUA)
Mobile Satellite Ventures Subsidiary LLC (MSV)
Motorola, Inc. (Motorola)
National Association of Emergency Medical Technicians (NAEMT)
National Association of Telecommunications Officers and Advisors, National Association of Counties, National League of Cities, and U.S. Conference of Mayors (NATOA *et al.*)
National Emergency Number Association (NENA)
National Public Safety Telecommunications Council (NPSTC)
National Regional Planning Council (NRPC)
New York City Police Department (NYPD)
Northrop Grumman Information Technology, Inc. (Northrop Grumman)
NTCH, Inc. (NTCH)
Oregon State Interoperability Executive Council (Oregon SIEC)
Penasco Valley Telephone Cooperative, Inc. (PVTC)
Peter G. Cook Consultancy, Inc. (PGCC)
Phil Stalheim (Stalheim)
Pierce County Public Transportation Benefit Area Corporation (Pierce Transit)
Ponderosa Telephone (Ponderosa)
Public Interest Spectrum Coalition (PISC)
Public Safety Spectrum Trust Corporation (PSST)
QUALCOMM Incorporated (QUALCOMM)
Region 33 (Ohio) 700 MHz. Regional Planning Committee (RPC 33)
Rehabilitation Engineering Research Center for Wireless Technologies (Wireless RERC)
Rivada Networks (Rivada)
Rural Cellular Association (RCA)
Rural Telecommunications Group, Inc. (RTG)
Sandro Brusco, Giuseppe Lopomo, and Leslie M. Marx (Brusco *et al.*)
Satellite Industry Association (SIA)
Senator Daniel K. Inouye (Senator Inouye)
Smithville Telephone Company, Inc. (Smithville)
Society of Broadcast Engineers, Incorporated (SBE)
Software Defined Radio Forum (SDR Forum)
Space Data Corporation (Space Data)
Spectrum Acquisitions Inc. (SAI)
Spring Grove Communications (Spring Grove)
Sprint Nextel Corporation (Sprint Nextel)
State of California (California)
State of Louisiana (Louisiana)
State of Mississippi Department of Public Safety (Mississippi)
State of Washington Military Department (Washington)
Stagg Newman (Newman)
Telecommunications Development Corporation (TDC)
Telecommunications Industry Association (TIA)
Telecommunity, Charlotte, NC, Houston, TX, & Montgomery Co., MD (Telecommunity)
Televate, LLC (Televate)
Tyco Electronics M/A–COM (TE M/A–COM)
United States Cellular Corporation (USCC)
Van Buren Telephone Company, Inc. (Van Buren)
Verizon Wireless (Verizon)
Virginia Fire Chiefs Association, Inc. (VFCA)
Virginia Information Technologies Agency (VITA)
Western Fire Chiefs Association (WFCA)
Wiggins Telephone Association (Wiggins)
Wirefree Partners III, LLC (Wirefree)
Xanadoo Corp. (Xanadoo)

Reply Comments

American Association of State Highway and Transportation Officials (AASHTO)
American Petroleum Institute (API)
Association of Public-Safety Communications Officials-International, Inc. (APCO)
AT&T Inc. (AT&T)
City of Philadelphia (Philadelphia)
Council Tree Communications, Inc. (Council Tree)
CTIA—The Wireless Association (CTIA)
Cyren Call Communications Corporation (Cyren Call)
Google Inc. (Google)
Intelligent Transportation Society of America (ITS America)
International Assn. of Chiefs of Police & National Sheriffs' Assn. (IACPNSA)
International City/County Management Association (ICCMA)
International Municipal Signal Association, International Association of Fire Chiefs, Inc., Congressional Fire Services Institute, and Forestry Conservation Communications Association (IMSA *et al.*)
Joe Hanna (Hanna)
Leap Wireless International, Inc. (Leap Wireless)
Maryland Broadband Cooperative (MBC)
Michael Dasso (Dasso)
Motorola, Inc. (Motorola)
National Association of Telecommunications Officers and Advisors, National Association of Counties, National League of Cities, and U.S. Conference of Mayors (NATOA *et al.*)
National Association of State Emergency Medical Services Officials (NASEMSO)
National Public Safety Telecommunications Council (NPSTC)
New York City Police Department (NYPD)
Nextwave Wireless, Inc. (Nextwave)
Northrop Grumman Information Technology, Inc. (Northrop Grumman)
Public Safety Spectrum Trust Corporation (PSST)
Regional Planning Committee Twenty (RPC 20)
Bill Reimann (Reimann)
Rivada Networks (Rivada)
Satellite Industry Association (SIA)
SouthernLINC Wireless (SouthernLINC)
Space Data Corporation (Space Data)
Sprint Nextel Corporation (Sprint Nextel)
Telecommunity, Charlotte, NC, Houston, TX, & Montgomery Co., MD
Televate, LLC (Televate)
Tyco Electronics M/A–COM (TE M/A–COM)
United States Cellular Corporation (USCC)
Verizon Wireless (Verizon)

[FR Doc. E8–23045 Filed 10–2–08; 8:45 am]

BILLING CODE 6712–01–P

Federal Register

Friday,
October 3, 2008

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 441

Medicaid Program; Self-Directed Personal Assistance Services Program State Plan Option (Cash and Counseling); Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 441

[CMS–2229–F]

RIN 0938–AO52

Medicaid Program; Self-Directed Personal Assistance Services Program State Plan Option (Cash and Counseling)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule provides guidance to States that want to administer self-directed personal assistance services through their State Plans, as authorized by the Deficit Reduction Act of 2005. The State plan option allows beneficiaries, through an approved self-directed services plan and budget, to purchase personal assistance services. The rule also provides guidance to ensure beneficiary health and welfare and financial accountability of the State Plan option.

DATES: *Effective date:* November 3, 2008.

FOR FURTHER INFORMATION CONTACT: Marguerite Schervish, (410) 786–7200.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 6087 of the Deficit Reduction Act of 2005

The Deficit Reduction Act (DRA) of 2005 was enacted into law on February 8, 2006 (Pub. L. 109–171). Section 6087 of the DRA provided for a new State Plan option that is built on the experiences and lessons learned from the disability rights movement and States that pioneered self-direction programs. Self-direction is an important component of independence, as it promotes quality, access, and choice.

Specifically, section 6087 of the DRA amended section 1915 of the Social Security Act (the Act) to add new paragraph (j). Section 1915(j)(1) of the Act would allow a State the option to provide, as ''medical assistance,'' payment for part or all of the cost of self-directed personal assistance services (PAS) provided pursuant to a written plan of care to individuals for whom there has been a determination that, but for the provision of such services, the individuals would require and receive State Plan personal care services, or section 1915(c) home and community-based waiver services. Section 1915(j)(1) of the Act also expressly excludes Medicaid payment for room and board. Finally, section 1915(j)(1) of the Act requires that self-directed PAS may not be provided to individuals who reside in a home or property that is owned, operated, or controlled by a provider of services, not related by blood or marriage.

Section 1915(j)(2) of the Act sets forth five assurances that States must provide in order for the Secretary to approve self-directed PAS under this State Plan option. First, States must assure that necessary safeguards are in place to protect the health and welfare of individuals provided services under this State Plan option, and to assure the financial accountability for funds expended with respect to such services. Second, States must assure the provision of an evaluation of the need for State Plan personal care services, or personal services under a section 1915(c) waiver. Third, States must assure that individuals who are likely to require State Plan personal care services, or section 1915(c) waiver services, are informed of the feasible alternatives to the self-directed PAS State Plan option (if available) such as personal care under the regular State Plan option or personal assistance services under a section 1915(c) waiver program. Fourth, States must assure that they provide a support system that ensures that participants in the self-directed PAS program are appropriately assessed and counseled prior to enrollment and are able to manage their budgets. Fifth, States must assure that they will provide to the Secretary an annual report on the number of individuals served under the State Plan option and the total expenditures on their behalf in the aggregate. States must also provide an evaluation of the overall impact of this new option on the health and welfare of participating individuals compared to non-participants every 3 years.

Section 1915(j)(3) of the Act indicates that States that offer self-directed PAS under this State Plan option are not subject to the statewideness and comparability requirements of the Act. Section 1915(j)(4)(A) of the Act defines self-directed PAS to mean personal care and related services under the State Plan, or home and community-based waiver services under a section 1915(c) waiver, provided to a participant eligible under this self-directed PAS State Plan option. Furthermore, the statute states that within an approved self-directed services plan and budget, individuals can purchase personal assistance and related services and hire, fire, supervise, and manage the individuals providing such services.

Section 1915(j)(4)(B) of the Act gives States the option to permit participants to hire any individual capable of providing the assigned tasks, including legally liable relatives, as paid providers of the services. The statute also gives States the option to permit participants to purchase items that increase independence or substitute for human assistance to the extent that expenditures would otherwise be made for the human assistance.

Section 1915(j)(5) of the Act sets forth the requirements for an ''approved self-directed services plan and budget.'' Section 1915(j)(5)(A) of the Act authorizes the individual or a defined representative to exercise choice and control over the budget, planning, and purchase of self-directed PAS, including the amount, duration, scope, provider, and location of service provision. Section 1915(j)(5)(B) of the Act requires an assessment of participants' needs, strengths, and preferences for PAS. Section 1915(j)(5)(C) of the Act requires States to develop a service plan based on the assessment of need using a person-centered planning process. Section 1915(j)(5)(D) of the Act requires States to develop and approve a budget for participants' services and supports based on the assessment of need and service plan and on a methodology that uses valid, reliable cost data, is open to public inspection, and includes a calculation of the expected cost of such services if those services were not self-directed. The budget may not restrict access to other medically necessary care and services furnished under the State Plan and approved by the State but not included in the budget.

Section 1915(j)(5)(E) of the Act requires that there are appropriate quality assurance and risk management techniques used in establishing and implementing the service plan and budget that recognize the roles and responsibilities in obtaining services in a self-directed manner and assure the appropriateness of such plan and budget based upon the participant's resources and capabilities.

Section 1915(j)(6) of the Act indicates that States may employ a financial management entity to make payments to providers, track costs, and make reports. Payment for the activities of the financial management entity shall be at the administrative rate established in section 1903(a) of the Act.

Note: CMS released a pre-print for use by States, at their discretion, to submit a State plan section 1915(j) amendment, which was approved under OMB #0938–1024.

B. History of Self-Direction

The Independent Living movement in the 1960s was premised on the concept that people with disabilities should have the same civil rights, options, and control over choices in their own lives as do people without disabilities, and that individuals with cognitive impairments should not be prohibited from exercising control over their lives. One mechanism that allows individuals to exercise more involvement, control, and choice over their lives is self-directed care. Self-directed care is a service delivery mechanism that empowers individuals with the opportunity to select, direct, and manage their needed services and supports identified in an individualized service plan and budget plan. Self-direction is not a service, but rather an alternative to the traditional service delivery model whereby a worker hired by the Medicaid recipient will furnish the Medicaid service to the Medicaid recipient and the Medicaid recipient retains the control and authority over who provides the services, how the services are provided, the hours they work, and their rate of pay.

Two national pilot projects demonstrated the success of self-directed care. During the mid-1990s, the Robert Wood Johnson Foundation awarded grants to develop self-determination in 19 States. These projects primarily evolved into Medicaid-funded programs under the section 1915(c) home and community-based services waiver authority. In the late 1990s, the Robert Wood Johnson Foundation again awarded grants to develop the ''Cash & Counseling'' national demonstration and evaluation project in three States. These projects evolved into demonstration programs under the section 1115 authority of the Act.

Evaluations were conducted in both of these national projects. Results in both projects were similar—persons directing their personal care experienced fewer unnecessary institutional placements, experienced higher levels of satisfaction, had fewer unmet needs, experienced higher continuity of care because of less worker turnover, and maximized the efficient use of community services and supports.

On February 1, 2001, the President announced the *New Freedom Initiative*, which included the following three elements: promoting full access to community life through efforts to implement the Supreme Court's decision in *Olmstead* v. *L.C.*, 527 U.S. 581 (1999) (''Olmstead''), integrating Americans with disabilities into the workforce with programs under the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA) (Pub. L. 106–170, enacted on December 19, 1999), and creating the National Commission on Mental Health. The President subsequently expanded this initiative through *Executive Order 13217* (June 18, 2001) by directing Federal agencies to work together to ''tear down the barriers'' to community living by developing a government-wide framework for providing elders and people with disabilities the supports necessary to learn and develop skills, engage in productive work, choose where to live, and fully participate in community life.

On May 9, 2002, as part of its response to the *New Freedom Initiative*, the Department of Health and Human Services unveiled the *Independence Plus* templates and the initiative to help States broaden their ability to offer individuals the opportunity to maximize choice and control over services in their own homes and communities. The Department developed two templates that allowed States to choose different self-directed design features to satisfy their unique programs. The section 1115 demonstration template was developed for States that wanted to permit individuals to receive a prospective cash allowance equivalent to the amount of their Medicaid personal care benefit. Under the section 1115 authority, individuals could directly manage their cash allowance and direct the purchases of their personal care and related services and goods. For those States not wanting to offer the cash allowance, a section 1915(c) home and community-based services waiver template was developed. The section 1915(c) waiver template allowed Medicaid recipients to self-direct a wide array of services, so long as these services are required to keep a person from being institutionalized in a hospital, nursing facility or intermediate care facility for the mentally retarded (ICF–MR).

However, a program was only given the *Independence Plus* designation when a State demonstrated a strong commitment to self-direction by developing a comprehensive program that offered a person-centered planning process, individualized budgeting, self-directed supports including financial management services, and a quality assurance and improvement plan. The intended purposes of the *Independence Plus* Initiative were to:

- Delay or avoid institutional or other high cost out-of-home placement by strengthening supports to individuals or families.
- Recognize the essential role of the individual or family in the planning and purchasing of health care supports and services by providing individual or family control over an agreed upon resource amount.
- Encourage cost effective decision-making in the purchase of supports and services.
- Increase individual or family satisfaction through the promotion of self-direction, control, and choice—a major theme expressed during the New Freedom Initiative—National Listening Session.
- Promote solutions to the problem of worker availability.
- Provide supports including financial management services to support and sustain individuals or families as they direct their own services.
- Assist States with meeting their legal obligations under the Americans with Disabilities Act (ADA) and the U.S. Supreme Court's *Olmstead* decision.
- Provide flexibility for States seeking to increase the opportunities afforded individuals and families in deciding how best to enlist or sustain home and community services.

A new section 1915(c) waiver application was also developed effective spring 2005 that incorporates our requirements for an *Independence Plus* program.

In 2003 we awarded 12 systems change grants to States for the development of *Independence Plus* programs. On October 7, 2004, the Robert Wood Johnson Foundation awarded a second round of ''Cash & Counseling'' grants to 11 States to develop *Independence Plus* programs using either the section 1915(c) waiver or section 1115 demonstration application. As of March 20, 2006, 15 States had 17 approved *Independence Plus* programs. In addition, there were 2 other States that included self-direction options in their section 1115 demonstrations and a multitude of States that offered self-directed program options in their section 1915(c) home and community-based services waiver programs.

This final rule finalizes provisions set forth in the January 18, 2008 proposed rule.

II. Analysis of and Responses to Public Comments on the Proposed Rule

We received a total of 55 timely comments from home care agencies and provider associations, State Medicaid directors, home care providers, unions, beneficiaries, and other individuals and

professional associations. The comments ranged from general support or opposition to the proposed provisions to very specific questions and detailed comments regarding the proposed changes. A summary of our proposals, the public comments, and our responses are set forth below.

General

Comment: Several commenters expressed support for the rule and the options, rights, support, and safeguards the provisions gave to participants. One commenter was appreciative of the possibility to be able to hire a caregiver of her own choosing. Another commenter stated that her ''hard to serve'' clients were satisfied with hiring persons of their choosing and that another client was able to get more hours of ''flexible'' care to fit her individualized needs and wishes.

Response: We appreciate the perspectives these commenters had in support of the rule.

Comment: Several commenters indicated opposition to the self-directed service delivery model. Some commenters stated that the model was not appropriate for most Medicaid beneficiaries. Other commenters were concerned that under the self-directed delivery model, caregivers were inadequately trained, that there was insufficient oversight of the care being provided beneficiaries, and that the potential for fraud, abuse, neglect, and exploitation increased.

Response: We disagree that the self-directed service delivery model is an inappropriate model. Our experience with programs that offer self-direction in section 1915(c), home and community-based services waiver programs and section 1115 demonstration programs, has confirmed the positive results found in the formal evaluation of the ''Self-Determination'' and ''Cash & Counseling'' projects. These programs successfully offered the self-directed service delivery model to children, older persons, and persons with cognitive impairments, developmental disabilities, and mental health needs. This final rule requires numerous participant safeguards, including the requirement for a support system that provides information about self-direction, as well as any counseling, training and assistance that may be needed or desired by participants to effectively manage their services and budgets. Key components of the support system are the support brokers and consultants who help participants perform tasks (for example, locating and accessing needed services, developing a service budget plan, and monitoring the beneficiary's management of the PAS and budget). Additionally, the support system includes financial management services entities that perform, or assist participant beneficiaries who have elected the cash option to perform, the employer-related and tax responsibilities. States may also add other activities that they deem necessary or appropriate in their support systems.

Other participant protections include requirements for an assessment of the individual's needs, strengths, and preferences for self-directed PAS; the use of a representative when needed; a person-centered planning process that engages the individual and also involves the individual's family, friends, and professionals in the planning or delivery of services or supports; a quality assurance and improvement plan; and individualized backup plans that address critical contingencies or incidents that would pose a risk of harm to the participant's health and welfare. We also require that States have in place a risk management system that identifies potential risks to the participant and employs tools or instruments (for example, criminal and worker background checks) to mitigate risks. The statute and this final rule further require States to assure that necessary safeguards have been taken to protect the health and welfare of individuals furnished services under this program and to assure financial accountability for the funds expended for self-directed services.

Comment: Some commenters requested clarification about the impact of funds paid to legally liable relatives, including a parent-caregiver, on the individual's or family's resources for other public benefit programs. The commenters urged that CMS work with other Federal partners to ensure that the receipt of cash would not jeopardize other public benefit programs and that we work to enact needed changes through legislation.

Response: The scope of this regulation does not extend to the impact of funds paid to legally liable relatives on their receipt of public benefits. However, we will take under advisement the suggestion of working with other agencies to address the impact of the cash option on the receipt of other public benefits.

Comment: One commenter sought clarification on whether CMS will require a State that has already implemented elements of self-direction under its State plan and waivers to modify these existing programs or submit a State plan amendment in compliance with the new rule. This same commenter sought clarification on whether the section 1915(j) option would be the exclusive authority for self-directed services or whether States may pursue or rely on other Medicaid authorities.

Response: We have not required and do not intend to require any State to submit a section 1915(j) State plan amendment, nor is the section 1915(j) opportunity the exclusive opportunity for a State to pursue the self-directed service delivery model. States are free to use some, all, or none of the appropriate Medicaid authorities that are available for use of the self-directed service delivery model.

Comment: One commenter requested clarification on the impact of the rule on a participant's eligibility for self-directed PAS, generally focusing on the interaction with a section 1915(c) waiver program. The commenter requested clarification on the following:

(1) Whether a participant may receive a budget for self-directed PAS and concurrently receive waiver services, or whether States may limit or deny access to waiver services.

(2) Whether waiver recipients who elect the self-directed PAS service option are considered enrolled in the waiver, and whether waiver ''slots'' must be set aside for persons who may disenroll from the option.

(3) Whether CMS intends to allow States to cover services beyond personal care and items that increase independence or substitute for human assistance.

(4) Whether individuals who are eligible for section 1915(c) waiver services under the special income group may be eligible for the self-directed PAS State plan option.

(5) Whether the individual would have to maintain enrollment in a waiver and what threshold is required to maintain that enrollment (for example, meeting the level of care criteria, having a plan of care, or receiving a waiver service on a periodic basis).

Response: Our response follows the order of the commenter's questions as noted above.

(1) It is permissible for an individual to participate in the self-directed PAS State plan option and concurrently receive services under a section 1915(c) waiver program as a State can select which of the section 1915(c) waiver services participants will have the opportunity to self-direct. It is not permissible to limit or deny a participant the other section 1915(c) waiver services for which the participant is eligible but not self-directing. Specifically, 42 CFR 441.472(d) requires that the ''budget may not restrict access to other

medically-necessary care and services furnished under the plan and approved by the State but not included in the budget.''

(2) Participants who elect the self-directed PAS State plan option may remain ''enrolled'' in their section 1915(c) waiver program and their so-called ''slots'' must be kept available in the event the participant voluntarily disenrolls or is involuntarily disenrolled from the self-directed PAS State plan option.

(3) When a State offers the opportunity to self-direct State plan personal care services (PCS), we do not believe it would be permissible for participants to purchase services that are not included within the State's definition of its PCS benefit. However, we recognize that both the statute and regulation at § 441.470(d) allow a State, at the State's election, to offer participants the opportunity to reserve funds to purchase items that increase independence or substitute for human assistance, to the extent that expenditures would otherwise be made for human assistance, including additional goods, supports, services, or supplies. We intend to issue further guidance on the criteria for permissible purchases to assist States in deciding the scope of the permissible purchases in their self-direction programs. We believe that, at a minimum, the permissible purchase must relate to a need or goal identified in the service plan.

(4) Individuals who are eligible for section 1915(c) home and community-based waiver services under the special income group may be eligible for the self-directed PAS State plan option.

(5) A participant would have to maintain all eligibility, level of care, and other requirements for the section 1915(c) waiver program. If, upon reassessment, a participant would no longer be eligible for the section 1915(c) waiver services through which the participant was able to self-direct their PAS, then the participant would no longer be able to self-direct their PAS under this State plan option.

Comment: Some commenters stated that they believe that the self-directed service delivery model would reduce the viability of agencies that deliver traditional agency-delivered services especially in rural or difficult to serve areas, would force individuals into a more expensive option, such as a skilled nursing facility (SNF) or hospital, and would delay hospital discharges and would force more agencies to only serve private pay clients.

Response: The evaluations conducted on the ''Self-Determination'' and the ''Cash & Counseling'' national projects have provided evidence of consumer satisfaction and quality of care. In addition, our experience with the section 1115 demonstration and section 1915(c) waiver programs has not shown this impact on traditional agency-delivered services. Therefore, we do not believe that the consequences noted in the comments regarding the self-directed service delivery model are necessarily predicted outcomes.

Comment: One commenter disagreed that the self-directed service delivery model costs less than traditional agency-delivered services.

Response: We have not asserted that the self-directed PAS State plan option costs less than the traditional agency-delivered service model. Two national pilot projects demonstrated the success of the self-directed service delivery model. The ''Self-Determination'' and the ''Cash & Counseling'' national projects were evaluated in a scientifically designed study. The evaluation results of those projects were similar and concluded that persons directing their personal care experienced fewer unnecessary institutional placements; experienced higher levels of satisfaction; had fewer unmet needs; experienced higher continuity of care because of less worker turnover; and maximized the efficient use of community services and supports. The results did not necessarily confirm that self-directed care costs less. For example, the results in the ''Cash & Counseling'' States indicated that Medicaid personal care costs were somewhat higher under ''Cash & Counseling'', mainly because enrollees received more of the care they were authorized to receive, as compared to the services delivered under the traditional agency model. Another finding was that increased Medicaid personal care costs under ''Cash & Counseling'' were partially offset by savings in institutional and other long-term-care costs. Furthermore, the findings also suggested that ''Cash & Counseling'' need not cost more than traditional programs if states carefully design and monitor their programs. For example, States could design their ''Cash & Counseling'' programs so that the cost per month is budgeted to match the cost per month of its traditional system, assuming that home care agencies will fully meet their care obligations. If the traditional system delivers the services beneficiaries are authorized to receive, there should be no difference in planned costs.

Comment: Two commenters expressed concern that the proposed rule added too many additional administrative requirements that would be burdensome or costly to States. One commenter thought that the rule would eliminate the efficiencies intended by the Congress.

Response: We acknowledge that States that have not yet developed the infrastructure necessary to support the self-directed service delivery model, in particular developing a support system, may experience higher initial administrative burdens and costs when designing their self-directed PAS programs. Regardless of whether a State uses its self-directed PAS State plan option, a section 1915(c) home and community-based services waiver option, or a section 1915(i) home and community-based services State plan option to offer the self-directed service delivery model, there will be administrative and support system requirements, and State Medicaid agencies must exercise administrative and oversight functions over their Medicaid programs.

Basis, Scope & Definitions (§ 441.450)

We proposed to implement section 1915(j) of the Social Security Act (the Act) concerning the self-directed PAS option through a State plan. We proposed that individuals who self-direct their PAS under this option have the decision-making authority to identify, access, manage, and purchase their PAS including a proposed list of minimum activities over which the individuals may exercise decision-making authority. We proposed several definitions specific to the self-directed PAS State plan option.

Comment: One commenter recommended that CMS add a reference to ''or their representative(s)'' whenever the rule refers to individuals or participants.

Response: We agree with the comment because the use of a representative to assist the individual or participant in exercising their decision-making authority is consistent with the self-directed service delivery model. Accordingly, we have revised the part 441, subpart J in relevant places by adding ''or their representatives'' when we refer to ''individuals'' or ''participants.''

Comment: A few commenters suggested that CMS add ''training'' of the PAS providers to the list of items subject to the participant's authority in § 441.450(b) and that participants have access to training provided by or through the State.

Response: We agree with the comment about adding ''training'' to the list of items subject to the participant's authority because the ability of a

participant to train the provider of their PAS in the participant's needs and in a manner that comports with the participant's preferences is crucial to the self-directed service delivery model. Accordingly, we have revised the authority provision at § 441.450(b)(4) to expressly include the ability of the participant to train their workers. We also believe that there are circumstances in which participants may desire that their PAS providers secure additional training beyond what the participants can provide. Accordingly, we have further revised the authority provision at § 441.450(b)(4) to permit participants to have access to other training provided by or through the State so that their PAS providers can meet any additional qualifications that participants think their providers may need.

Comment: Some commenters thought that § 441.450(b) should be revised to include the ability of the participant to select his or her own financial management services (FMS) entity and his or her own supports brokers or consultant.

Response: We believe that the services of the FMS entities are administrative functions and that States have the authority to determine whether or not to limit the FMS entities that will provide the FMS functions. We believe that the functions of a supports broker or consultant comprise a service that is unique to this State plan option and, as such, recognize that States would want to be able to claim Federal medical assistance percentages (FMAP) for this service. The supports broker or consultant performs a variety of key functions that include the provision of information, counseling, training and assistance, or helping participants access needed information, counseling, training and assistance to help participants effectively manage their PAS. Typically, they may assist participants in locating and accessing needed services, developing service budget plans and helping participants to fulfill their roles and responsibilities as an employer. Based on our experience with self-direction programs under section 1115 demonstrations or section 1915(c) waiver programs, we have learned that participants desired the opportunity to select a different supports broker or consultant if the relationship between an assigned supports broker or consultant and the participant was not satisfactory. We have revised the rule at § 441.450(c) to add a definition for ''supports broker'' or ''consultant.'' Further detail on the definition is provided in response to another comment.

Comment: Some commenters expressed disagreement with the requirement that participants are allowed to determine the amount paid for a service, support, or item stating that a State law or collective bargaining agreement could conflict with this authority. One commenter thought that this requirement was inconsistent with the statutory language and congressional intent and would deprive States of their ''traditional wage standard-setting role.'' Another commenter asked for clarification on how the requirement comports with State plan rate-setting requirements, including the requirement that there must be public notice of any significant proposed change in methods and standards for setting payment rates.

Response: We believe that the statutory authority contemplates including participants in the decision-making authority over the amount paid for a service, support or item. We believe that only a few States have actually set the precise wages for participants of self-direction programs. Indeed, we believe that most States reimburse varying amounts even for services provided by traditional service models. We further note that the requirement for public notice applies to rates paid by the Medicaid agency for services. In the case of self-directed services, it would be the budget amount upon which Medicaid reimbursement would be based. The rate that the participant pays their provider of PAS from the available budgeted amount is outside the scope of the requirement for public notice of Medicaid rate setting.

Comment: One commenter was confused about the apparent multiple meanings for the word ''support'' or ''supports.'' The commenter suggested that we amend the rule to clarify that the State has the discretion to limit supports that are beyond the State's obligation, such as repeated counseling, training, and assistance sessions.

Response: To clarify, in the context of self-directed PAS, ''supports'' generally means a service or item that a participant can purchase and ''support'' generally means the information, counseling, training, or assistance provided under the support system, including that provided by a support broker or consultant. We disagree that the regulation needs further amending to allow the State to provide limits to the PAS supports. If participants demonstrate that they cannot effectively manage their PAS or budgets, the rule provides States with options such as offering additional assistance, including FMS; mandating the use of a representative; or involuntarily disenrolling a participant from the self-directed PAS option.

Comment: One commenter requested clarification about how the requirement that States have a mechanism that satisfies the Medicaid requirements on provider agreements would apply when vendors furnish items and supplies. It is unclear who the ''enrolled provider'' is when services, items, or supplies are purchased with cash.

Response: As self-directed PAS is not ''cash assistance'' but rather is a service delivery model, the requirements on provider agreements at section 1902(a)(27) of the Act would not be a barrier if a State elected the cash option.

Comment: One commenter thought the definition of ''assessment of need'' was too vague. The commenter recommended use of a standardized assessment instrument.

Response: We believe the definition of ''assessment of need'' is adequate. We acknowledge that a standardized assessment instrument could lead to more uniformity in determining an individual's PAS needs and encourage their use where possible. However, it may not be useful in determining the strengths, personal goals, and preferences of the individual for PAS which is essential in a self-directed service delivery model. Accordingly, we are not amending the definition of ''assessment of need'' to require States to use a standardized assessment instrument, but recognize a State may nonetheless choose to do so.

Comment: Some commenters suggested language to be included in the definition of ''individualized backup plans.'' The recommended language included additional language for the following areas: respecting the individual's choices and preferences, planning for emergency preparedness, and a State assessment of worker shortage that could possibly impact the ability of an agency to provide back-up care, and if a shortage exists, require that the individual cannot enroll unless a backup plan can be developed that relies on family, personal, and available community services.

Response: We agree with the comment that an individualized backup plan has to respect the individual's choices and preferences and not substitute the individual's choices with those of others who may be participating in the development of the backup plan. We believe that this is consistent with the ''dignity of risk'' concept that recognizes as individuals experience greater choice and control, they may also desire to assume more of the responsibilities and risks associated with the provision of their PAS. The

individualized backup plan is related to the provisions of the rule at § 441.476 on risk management and should occur as part of the discussion about the risks an individual is willing and able to assume. As it is of utmost importance that the backup plan is individually tailored to the individual's needs and preferences, we believe that a State or regional approach that treats all participants' contingencies the same by imposing a requirement that participants should simply contact 911 emergency services in the event of a critical contingency or incident, is not a sufficiently individualized backup plan. We have revised the definition of ''individualized backup plan'' in § 441.450(c) to clarify that the individualized backup plan must demonstrate an interface with the risk management provision at § 441.476 which requires States to assess and identify the potential risks to the participant (such as any critical health needs), and ensure that the risks and how they will be managed are the result of discussion and negotiation among persons involved in the service plan development. We have also revised the definition to include that the backup plan must be individualized as well as not include a 911 emergency system or other emergency system as the sole backup feature of the plan.

We also agree that emergency preparedness may be a part of the individualized backup planning; however, we must stress that these two things are not the same. We view ''emergency preparedness'' as addressing the contingency of a natural disaster or other similar catastrophic disaster and planning for how the participant will be secured or evacuated to safety. We view the ''individualized backup plan'' as a much broader participant protection than emergency preparedness. We view the individualized backup plan as a cornerstone to self-directed PAS because it sets forth the participant's wishes in a critical contingency or incident that would pose a risk of harm to the participant's health or welfare. While ''emergency preparedness'' can be part of an individualized backup plan, we do not believe additional language is necessary for it to be included.

We disagree with the comment that individuals should not be permitted to enroll in the self-directed PAS State plan option if an individualized backup plan cannot be developed which relies on family, personal, and available community services. While we are aware that some individuals who select the self-directed State plan option will not have access to family and personal resources or to community resources, in these instances, the supports broker or consultant would help the individual locate and access the providers of PAS needed by the individual. If, after reasonable effort by the supports broker or consultant, it is not possible to locate providers of PAS suitable to the individual, then it would be permissible to delay the individual's enrollment in the self-directed PAS option until such time as suitable providers of their PAS can be found. We do not believe that the definition of ''individualized backup plan'' needs to be revised to reflect this procedure because the definition of ''supports broker or consultant'' indicates that one of the roles of the supports broker or consultant is to help an individual locate and access needed PAS, if necessary.

Comment: We invited comments on other possible relationships that could be included within the definition of ''legally liable relatives'' (LLRs). One commenter thought that ''significant others'' should be included in the definition. Some commenters suggested that we amend the rule to include provider training requirements and other safeguards. Another commenter suggested that we amend the regulation to require States to have a mechanism to deal with situations in which participants may be pressured to hire a family member or friend or are having difficulty discharging a family member or friend.

Response: We disagree that the definition should be revised to include ''significant others.'' We believe it is up to the States to determine what relationships they include in their definition of ''legally liable relatives''. We also disagree that the regulation should be revised to specify certain safeguards, such as minimum training requirements, competency evaluations, criminal background checks, or other modifications to ensure that PAS workers, including LLRs, are properly trained and qualified to perform the functions of their jobs. One of the most valued aspects of a self-directed program is that participants have the authority to train their providers of PAS in what they need and how to deliver the PAS in accordance with their personal, cultural, and religious preferences. As noted previously, we have revised the regulation at § 441.450 to permit participants to have access to other training provided by or through the State so that their PAS providers can meet any additional qualifications that participants think are needed or desired. Accordingly, we do not believe that the rule needs to be revised to specify provider training requirements as this will vary from participant to participant. We further do not believe that the regulations need to be revised to require that States have a mechanism to deal with situations in which participants may be pressured to hire a family member or friend or where they are having difficulty discharging a family member or friend. The role of the supports broker or consultant is to assist the participant in managing their PAS and budget plans, including how to hire the person most suitable to the participant, and how to discharge the worker if necessary. Finally, as noted above, we do not believe the regulation needs to be revised to add more safeguards to detect whether needed services are actually being provided. We believe that the regulation provides sufficient participant protections to detect whether needed services are actually being provided. It is CMS' expectation that participants' services and budget plans will be monitored by supports brokers or consultants; that the FMS entities, as required in the rule, will report any irregularities detected to participants and States; and that the State Medicaid agency will exercise ongoing oversight and monitoring of the provision of PAS through its Quality Assurance and Improvement Plan and remediate any problematic issues for participants.

Comment: One commenter noted that the definition of ''self-direction'' did not acknowledge that participants who self-direct their PAS must have the ability to perform the required roles and responsibilities. Another commenter sought further clarification of the definition of ''self-direction.'' The commenter stated that a clarification may be needed to ensure that the maximum amount and scope of a person's budget will not exceed the level of services determined by the assessment or the budget established by the valid budget methodology.

Response: The self-directed service delivery model does not presume who can and cannot self-direct their PAS. Instead, the model requires that the participant is assessed for their need for PAS, and furnished the necessary information, counseling, training, and assistance so that the participant can manage his services and budget. In addition to the support system, the regulations provide several other mechanisms that enable participants to manage their services and budgets such as the use of a representative to assist the participant to exercise his decision-making authority over the services and budget. If a participant is no longer able or willing to self-direct their PAS, the

State is allowed to require additional assistance for the participant, mandate the use of a representative, or, if need be, involuntarily disenroll the participant. Therefore, we have not revised the regulation as we do not believe any clarification is necessary. Moreover, the regulation at § 441.470 clearly sets out the steps for determining a participant's budget amount such that we do not believe that the budget will exceed the level of needed PAS.

Comment: A few commenters had concerns about the definition of the ''service plan.'' One commenter suggested that the definition not require unpaid caregivers to attend the planning meeting, but instead, provide the service hours that are included in the service plan. One commenter cautioned against a reduction in the budget based on an erroneous assumption that informal support is available and another sought minimum qualifications for those responsible for development of the service plan.

Response: The definition of ''service plan'' permits the participant to direct the planning process, including inviting the participant's family or others of the participant's choosing to the planning meeting. This is not a requirement, however. In addition, we believe it would be inappropriate to revise the definition to require any minimum qualifications of individuals responsible for development of the service plan as States should have the flexibility to craft their own requirements. However, we acknowledge that there may be a ''lead'' person who will assume responsibility for assuring that the planning meetings occur and that the resultant plan meets the regulatory requirements. We would expect that this individual or individuals would minimally be familiar with person-centered and directed planning and person-centered services, and preferably possess demonstrated skill to facilitate person-centered and directed planning. We wish to clarify that our reference to persons who are ''required'' to attend the planning meeting was to include those persons who may be required by the State to attend the person-centered planning meeting. We did not intend to suggest that the participant should require the attendance of family, friends, or others who do not wish to participate in the meeting. Finally, we agree that the service budget should not be reduced based on an erroneous assumption about the level of service that an informal caregiver would be providing.

Comment: Two commenters indicated that the requirements for a comprehensive assessment, care planning, health and welfare assurances, and monitoring appear to meet the definition of case management as defined in section 6052 of the DRA, Optional State Plan Case Management Services. They also requested clarification on whether a participant who elects this option will be unable to receive any other type of case management covered by Medicaid. One commenter asked how States would reconcile the requirements of the self-directed PAS State plan option final rule with section 6052 of the DRA. For example, as outlined in the January 18, 2008 self-directed PAS State plan option proposed rule, CMS ''requires case management services under self-directed PAS,'' but the case management provision of the DRA prohibits States from requiring beneficiaries to receive case management. Furthermore, the commenter suggested that the self-directed PAS State plan option proposed rule requires ''gate-keeping'' and advocacy functions but the case management DRA provision requires these functions to be separated by payment source and beneficiaries to be allowed to select from all qualified providers. One commenter asked how CMS could require a case manager to monitor the participant's service plan under the self-directed PAS State plan option, if, as stated in the case management DRA provision, the State cannot bill for services defined as ''case management'' as administrative or other services.

Response: We believe that the functions that are required of the supports broker or consultant are not ''case management'' within the definition of case management provided pursuant to section 1915(g)(2) of the Act, as revised by section 6052 of the DRA. Section 1915(g)(2) of the Act defines case management services for purposes of section 1915(g) of the Act as services that will ''assist individuals eligible under the State plan in gaining access to needed medical, social, educational, and other services.'' Case management includes the following: Assessment of an eligible individual to determine service needs, including activities that focus on needs identification; development of a specific care plan based on the information collected through the assessment; referral and related activities to help an individual obtain needed services, including activities that help link the eligible individual with medical, social, educational providers, or to other programs and services that are capable of providing needed services; and monitoring and follow-up activities, including activities and contacts that are necessary to ensure that the care plan is effectively implemented and adequately addresses the needs of the eligible individual.

We believe that the relationship between a supports broker or consultant and a participant and the assistance provided by the supports broker or consultant in the self-directed PAS State plan option is fundamentally different than the relationship required between a case manager and beneficiary and the assistance provided by a case manager. Supports brokers or consultants are agents of the participants in that they are primarily responsible for facilitating participants' needs in a manner that comports with the participants' preferences. As the relationship that develops must be supportive and ongoing, participants may request a different supports broker or consultant if the relationship is not working out. Furthermore, the functions performed by supports brokers or consultants are unique to the self-directed service delivery model because supports brokers or consultants are primarily responsible for providing information, training, and counseling and assistance, as desired by participants, that help participants effectively manage their PAS and budgets. These functions include helping participants develop their service budget plans and fulfill their employer-related responsibilities. This assistance can also include helping participants locate and access PAS, but supports brokers or consultants do not perform assessments of need or develop care plans. Although supports brokers or consultants do perform a monitoring function for the purpose of checking whether participants' health status has changed, they are also verifying whether expenditures of funds are being made in accordance with the service budget plans.

Because of the unique position of a supports broker or consultant under the self-directed PAS State plan model, we believe that a traditional case manager can perform the functions of supports brokers or consultants only if they receive training in the self-directed service delivery model that includes a demonstrated capacity to understand that they are to assist the participants with fulfilling their preferences, and not supplant the participants' preferences with their views or preferences. As evidenced by the comment, it is important to avoid confusion between the functions of a supports broker or consultant and the services furnished by a case manager, and we believe a definition of supports broker or

consultant would clarify the functions. Accordingly, we have revised § 441.450(c) to add a definition of supports broker and consultants that reflects the unique role and functions of the supports broker or consultant; that requires States to develop a protocol to ensure that supports brokers or consultants are accessible to participants, have regularly scheduled phone and in-person contacts with participants, monitor whether participants' health status has changed and whether expenditure of funds are being made in accordance with service budget plans; and to require that supports brokers or consultants meet the training and monitoring requirements and qualifications required by their respective State. We have also added to § 441.450(c) the requirement that support brokers or consultants be available to each participant as part of the support system.

Comment: One commenter suggested that we include a definition of ''person-centered services'' or ''person-directed planning'' because it is critical that States have a uniform understanding and application of these concepts.

Response: We include in the regulations at § 441.468(b)(1) a requirement that the service planning process be ''person-centered and directed'' to ensure the identification of each participant's preferences, choices, and abilities, and strategies to address those preferences, choices, and abilities. We further require at § 441.468(c)(1) that the State's procedures governing service plan development allow the participant to engage in and direct the process to the extent desired, and allow the participant the opportunity to involve family, friends, and professionals. We do not believe that the regulation should be revised to add definitions of ''person-centered services'' or ''person-directed planning,'' because the intent of such processes is clear and we wish to provide flexibility in implementing the concepts. We wish to note there are numerous resources available that define ''person-centered planning'' and ''person-centered services'' to assist the States. There are also different models (for example, MAPS, PATH, ELP, Personal Futures Planning) of person-centered planning. According to one resource, (Schwartz, A.A., Jacobson, J.W., & Holburn, S. (2000)). Defining ''person-centeredness'': Results of two consensus methods. *Education & Training in Mental Retardation & Developmental Disabilities*), each model has a different emphasis and should be applied based on the needs of the individual. Furthermore, the authors indicate that all models share a common underlying set of eight basic characteristics. These characteristics include the following:

- The person's activities, services and supports are based on his or her dreams, interests, preferences, strengths, and capacities
- The person and people important to him or her are included in planning, and have the opportunity to exercise control and make informed decisions
- The person has meaningful choices, with decisions based on his or her experiences
- The person uses, when possible, natural and community supports
- Activities, supports and services foster skills to achieve personal relationships, community inclusion, dignity, and respect
- The person's opportunities and experiences are maximized, and flexibility is enhanced within existing regulatory and funding constraints
- Planning is collaborative, recurring, and involves an ongoing commitment to the person
- The person is satisfied with his or her activities, supports and services.

Generally, any model for person-centered planning a State uses should be based on the wishes and needs of the individual. With respect to the concept of ''person-directed'' planning, we expect that participants will actually direct the service planning and budget development. We think this is an important aspect of person-centered planning in order to ensure that the resultant service and budget plan actively engages a participant, accurately reflects a participant's abilities, preferences, and choices, and better meets the underlying purpose of the self-directed PAS option. We are available to provide information and technical assistance to any State that desires it.

After consideration of public comments received, we are finalizing § 441.450 with revision to the definition of individualized backup plan and addition of a definition of supports broker or consultant. We have also generally added ''representative'' throughout the regulations, as applicable.

Self-Direction: General (§ 441.452)

We proposed that States must have in place, before electing the self-directed PAS option, personal care services through the State plan, or home and community-based services under a section 1915(c) waiver. We proposed that the State must have both traditional service delivery and the self-directed PAS service delivery option available in the event that an individual voluntarily disenrolls or is involuntarily disenrolled, from the self-directed PAS service delivery option. We also proposed that the State's assessment of an individual's needs must form the basis of the level of services for which the individual is eligible and that nothing in the self-directed PAS State plan option would be construed as affecting an individual's Medicaid eligibility, including that of an individual whose Medicaid eligibility is attained through receipt of section 1915(c) waiver services.

Comment: One commenter requested that CMS recognize other delivery models as ''traditional'' besides ''agency-delivered'' services. This same commenter asked whether a State that offers home health services under its State plan could meet the requirement for a ''traditional'' service-delivery model under this rule. Finally, this commenter sought clarification on whether the requirement that States offer a ''non-self-directed'' model refers only to the ''agency-delivered'' service model. Another commenter indicated that it is imperative that all participants retain the option to use the ''traditional'' service-delivery system.

Response: In the preamble to the proposed rule, we construed the ''traditional'' service-delivery model to mean ''traditional agency-delivered services'', *i.e.*, the personal care and related services and section 1915(c) waiver services that are delivered by personnel hired, supervised, and managed by a home care or similar agency. We agree with the commenters that we should not limit the ''traditional'' delivery system to ''agency-delivered services'' and now construe ''traditional'' delivery system to mean the delivery system that the State has in place to provide their State plan optional personal care services benefit or their section 1915(c) waiver services for individuals who are not self-directing their PAS under a section 1915(j) State plan option.

''Personal care and related services'' as used in section 1915(j)(4)(A) of the Act are those services that are included in the State's definition of its optional personal care services benefit and not other State plan services such as home health. We further note section 1915(j)(2)(C) of the Act already requires that participation in the self-directed PAS State plan option is voluntary. Also, the regulation at § 441.456 permits participants to voluntarily disenroll from the self-directed PAS option. Finally, the regulation at § 441.458 allows States to involuntarily disenroll participants. In the event of a voluntary or involuntary disenrollment,

participants must resume receiving traditional services to which they are eligible under the State plan personal care service benefit or a section 1915(c) waiver program.

After consideration of the public comments received, we are finalizing § 441.452 without revision.

Use of Cash (§ 441.454)

We proposed that States have the option to disburse cash prospectively to participants self-directing their PAS, and further, that States must ensure compliance with all applicable Internal Revenue Service requirements; that participants, at their option, could use the financial management entity for some or all of the functions described in § 441.484(c); and that States must make a financial management entity available to participants if they demonstrated, after additional counseling, information, training, or assistance, that they could not effectively manage the cash option.

Comment: One commenter thought that allowing individuals who choose the cash option to perform tax-related reporting functions puts the individual at risk with the Internal Revenue Service (IRS). One commenter asserted that older persons and persons with disabilities are unlikely to be able to properly manage the quarterly IRS tax payments. One commenter suggested that the rule be revised to permit the State to require a participant to use the financial management services (FMS) entity for all or part of the functions described in § 441.484(c). One commenter thought that making use of the FMS entity optional would add an additional administrative and cost burden to the States. Also, the commenter stated that it is unwise for CMS to allow the practice of the hours of needed PAS to be determined by the wage/pay needs of the provider of care rather than the hours of PAS actually needed by the individual.

Response: On September 13, 2007, we released a State Medicaid Director Letter (SMDL#07–013), with preprint, for the self-directed PAS State plan option. In the preprint, we indicate that States must assure that all IRS requirements regarding payroll/tax filing functions will be followed, including when participants perform these functions themselves. In the regulation at § 441.454, we require that States can elect to disburse cash prospectively to participants who are self-directing their PAS and must ensure compliance with the IRS requirements if they adopt this option. We have revised the regulation at § 441.454(b) to add a minimum list of the tax-related responsibilities that are required by the IRS because we believe these examples will help to illustrate some of the tax-related responsibilities that must be performed. We recognize that not all participants who select the cash option will have the interest or skill to bear these responsibilities, so the regulation at § 441.454(c) notes that participants may use a FMS entity to perform some or all of the employer and tax-related functions. We disagree that the regulation should permit the State to require a participant to use an FMS entity if that individual has selected the cash option and have not changed the rule. The purpose of the self-directed service delivery model is to vest participants with the choice and authority over decisions about their PAS and budget purchases. Therefore, when participants who have selected the cash option also choose to perform some or all of their employer and tax-related functions, we intend for that decision to be respected. Thereafter, if participants experience difficulty in performing some or all of these functions, or no longer choose to perform them, the regulation at § 441.454(c) permits participants to use the services of the FMS entity. We acknowledge that States who have not yet built an infrastructure to support this self-directed State plan option will likely experience an initial higher administrative and cost burden, but again, the State is best suited to make a determination on how best to expend its resources. Lastly, the commenter misconstrues the link of needed hours of PAS to the wage/pay needs of the provider. The regulation does not permit the wage/pay needs of the provider of PAS to determine the wage/pay they will be paid; rather, the participant determines the amount to be paid for a service, support, or item.

Comment: One commenter requested guidance on whether the FMS functions can be divided between a State and an FMS entity. Another commenter asked that we delineate the fiscal responsibilities that a participant who chooses the cash option may manage without the involvement of an FMS entity, and those that the State or FMS must retain, for example, disbursing the cash and monitoring spending.

Response: We believe these issues are best handled on a case-by-case basis as we believe it is important that States have the flexibility in the oversight of the functions it has delegated to an FMS entity versus those it has retained.

Comment: One commenter requested more detail in the requirements pertaining to the cash option.

Response: We believe the requirements for the cash option have been adequately addressed in § 441.454(c) of the regulation. We can work to provide further technical guidance and assistance to States on a case-by-case basis, as needed.

Comment: One commenter had concerns about how the IRS would treat the cash received by a participant and asked if there is an IRS ruling on the income tax consequences for participants who choose the cash option.

Response: We are unaware of any IRS ruling regarding the cash option under the self-directed PAS State plan option.

After consideration of the public comments received, we are finalizing § 441.454 with revision to provide examples of tax-related responsibilities required by the IRS.

Voluntary Disenrollment/Involuntary Disenrollment (§ 441.456 and § 441.458)

In these provisions, we proposed that States must permit a participant to voluntarily disenroll from the self-directed PAS option at any time, and that States must specify the conditions under which a participant may be involuntarily disenrolled from the self-directed PAS option. We proposed that CMS must approve the State's conditions under which a participant may be involuntarily disenrolled. In both situations, we proposed that the State must specify in the State plan the safeguards that are in place to ensure continuity of services during the transition from self-directed PAS to the traditional service delivery system.

Comment: Some commenters stated that States would not have the ability to guarantee ''continuity of services during the transition from self-directed PAS'' such that the rule needs to clarify that the safeguards to ensure continuity of services belong in the section 1915(j) State plan amendment, and not in other parts of a State's plan; and that States be required to have a ''transition period'' in the State plan amendment.

Response: We continue to believe that States must have the discretion and flexibility to design their own procedures to guarantee the continuity of services when a participant voluntarily or involuntarily disenrolls from the self-directed PAS State plan option. We further believe States have the ability to guarantee ''continuity of services during the transition from self-directed PAS.'' Accordingly, we have not revised the regulations to provide a transition period as the commenters suggested. However, we agree with the commenters that the safeguards are better suited in the section 1915(j) State plan amendment. Accordingly, we have revised the regulation at § 441.456(b) and § 441.458(c) to make the technical change that the safeguards be listed in

the section 1915(j) State plan amendment and not other parts of a State plan.

Comment: Some commenters suggested that participants receive information about disenrollment at the time of enrollment and that information about feasible alternatives and disenrollment should be communicated in a manner that is clearly understandable by the individual.

Response: We agree that individuals should receive information about disenrollment at the time of enrollment and we believe that this information would be best communicated as part of the initial counseling that is provided to the individual. Accordingly, we have revised the regulation at § 441.464(d)(1) to require that a State inform individuals about disenrollment at the time of counseling prior to enrollment. We also agree with the comments that all information be communicated to the individual in a manner and language understandable by the individual. We have revised the regulations at § 441.464(c) and § 441.464(d) to reflect this requirement. We believe that these issues are better suited to the regulations at § 441.464 as we believe that areas such as information and effective communication are more properly within the scope of the support system provisions at § 441.464, and thus have revised those regulations accordingly.

Comment: One commenter recommended that the rule be revised to require that if a participant is dissatisfied with their FMS entity or their ''agency with choice'' entity, that the State offer the participant another entity to furnish these supports before disenrolling a participant who seeks to voluntarily disenroll from the self-directed PAS option.

Response: We believe decisions about whether to offer another entity to a participant and the circumstances under which participants may be disenrolled are best determined by each State when they design their self-directed PAS State plan option. Accordingly, we have not changed the regulation to require that a State offer a participant another FMS or agency with choice entity if the participant becomes dissatisfied with their current one. We do, however, encourage States to design their self-directed PAS State plan option to optimize the choice and authority participants will be able to exercise over their needed supports.

Comment: One commenter suggested that we include protections for workers in the rule at § 441.458. Specifically, the commenter recommended that the rule be revised to permit the State to involuntarily disenroll a participant who is violating anti-discrimination laws and other applicable federal or state labor laws and regulations.

Response: We believe that issues about potential worker discrimination or violations of labor laws and regulations are best handled as part of the initial and ongoing information, counseling, training, and assistance that are provided by the supports brokers or consultants to the participants. We further believe that States could make the determination whether potential worker discrimination or violations of labor laws and regulations could be a condition of disenrollment from the self-directed PAS State plan option. As we believe that States are best suited to make this determination, we do not believe it requires a revision to the regulations.

Comment: One commenter stated that States should not involuntarily disenroll participants because of discomfort with the participant's personal preferences. Also, the commenter suggested that the participant be given an opportunity to rebut a decision of involuntary disenrollment. Another commenter recommended that CMS revise the regulations to clarify that States should not be allowed to involuntarily disenroll a participant when that participant is fully accessing services pursuant to the service plan and, as applicable, complying with his risk management agreement.

Response: We agree that States should not disenroll a participant based on discomfort with a participant's personal preferences, or when a participant is fully accessing services pursuant to the service plan and complying with any applicable risk management agreement. We will be carefully reviewing the State's submission of the conditions for involuntary disenrollment. We strongly encourage States to respect participants' personal preferences and to afford participants their dignity of risk. As stated previously, the concept of ''dignity of risk'' recognizes that as individuals experience greater choice and control, they may also desire to assume more of the responsibilities and risks associated with the provision of their PAS. If a State has concerns about participants' personal preferences or other risks participants may wish to assume, we encourage States to use risk mitigation strategies, such as the use of a risk agreement. A ''risk agreement'' is an agreement entered into between the participant and relevant and necessary parties. It identifies the risks that the participant is willing to assume, the responsibilities that the participant and others are willing to undertake to mitigate the identified risks, and the circumstances that might cause the agreement to be terminated. The risks that participants may assume and how to mitigate them are subjects of discussion and negotiation as required in the regulations at § 441.476. We do not believe that the rule requires further revision as suggested by the commenter since the regulations at § 441.476 adequately address risk management requirements.

After consideration of the public comments received, we are finalizing § 441.456 and § 441.458 with revision for a technical change to specify that the safeguards for ensuring continuity of services during the transition from self-directed PAS be listed in the 1915(j) State Plan Amendment.

Participant Living Arrangements (§ 441.460)

In order to reflect the requirement at section 1915(j)(1) of the Act, we proposed that self-directed PAS are not available to an individual who resides in a home or property that is owned, operated, or controlled by a provider of services who is not related to the individual by blood or marriage. We proposed that States may specify additional restrictions on a participant's living arrangements if they have been approved by CMS.

Comment: A few commenters opposed the inclusion of assisted living facilities (ALFs) within the requirement that self-directed PAS cannot be provided in a home or property owned, operated, or controlled by a provider of services who is unrelated by blood or marriage to the individual. The commenters offered a variety of reasons that would support how ALFs could successfully provide PAS. A few other commenters noted that the limitation on living arrangements should not apply to individuals who choose to live in the home of a non-related provider of services, for example, a domestic partner or a friend, who is the paid provider of their PAS. Some commenters stated that the rule should be revised to clarify that an individual should not be precluded from the self-directed PAS option unless they are living in arrangements where the housing and the PAS are provided by the same individual or entity and the PAS are part of the paid services. A commenter suggested that we clarify that the prohibition would not apply to a landlord-tenant relationship that meets local and State tenant laws; a housing provider who co-signs a lease to allow an individual to secure affordable housing; or a service provider's housing corporation that helps the individual

secure housing, when the housing corporation has separate governance from the service provider. A commenter thought that the requirement was too restrictive and would preclude persons with severe disabilities who need extensive support from the option to self-direct their PAS.

Response: The statute is very clear as to the type of living arrangements that could be entered into under this self-directed PAS State plan option. The living arrangements should optimize participant independence, choice, and community integration and are intended to mitigate the control that some providers of PAS could exert over participants if participants lived in a setting owned, operated, or controlled by the unrelated providers of PAS. The exception is if the provider of PAS is related by blood or marriage to the participant because it is presumed that providers of PAS related by blood or marriage to the participant will not exert undue influence over the participant and will facilitate, and not impede, the participant's self-direction of the participant's PAS and budget.

In the proposed rule published on January 18, 2008, we noted that, ''programs that have successfully provided the self-directed care option have typically provided it to individuals who live in homes of their own or in the homes of their families.'' We also noted that we believe that ''successfully directing one's own care may become less feasible when individuals receive services and reside in large, provider-owned, operated, or controlled residential living arrangements.'' We provided an example of a residential facility that also provides and receives payment for the provision of personal care and related services that may prohibit the self-directed service delivery option for fear of duplication of services. We further noted that we believed this limitation should be applied to individuals residing in ALFs, as we anticipated that the provider would both control the housing and be expected to provide the PAS. However, we noted that we did not believe this limitation would apply to situations in which the individual resided in the home of another whom the individual wished to employ under the self-directed PAS option. We are now clarifying that any living arrangement, irrespective of the home-like nature of the setting, that is owned, operated, or controlled by a provider of the participant's PAS, not related by blood or marriage to the participant, is not permitted by statute in the self-directed State plan option. We agree with the commenters that stated that the regulations should be revised to clarify that an individual should not be precluded from the self-directed PAS option unless they are living in arrangements where the housing and the PAS are both provided by the same individual or entity and the PAS are part of the paid services. We have revised the regulation at § 441.460(a) to insert ''PAS'' before ''provider'', thereby indicating that the limitation only applies where the living arrangement and the PAS are provided by one and the same individual or entity. We further wish to clarify that when we referenced the ''home of another'' in the proposed rule, we intended that the home was controlled, operated, or owned by someone related by blood or marriage to the participant and so we allowed this under the exception to the statutory limitation.

Based on the comments we received pertaining to ALFs, we understand that there are some ALFs that are not in the business of providing PAS. Accordingly, we believe that where the living arrangements, including ALFs, do not furnish PAS (as that term is defined under the self-directed PAS State plan option), then the living arrangements may be conducive to the participant's successful and effective self-direction of their PAS and budgets. If a supports broker or consultant, the State, or other person known to the participant, becomes aware that the participant's exercise of choice over their PAS and budgets is hindered because the nature of the living arrangement has changed, the living arrangement begins to offer PAS, or other conditions arise making self-direction of the participant's PAS overly difficult or impossible, then the State must promptly rectify the situation by assisting the participant to find other acceptable and safe housing.

Comment: A commenter recommended that we delete § 441.460(b), which permits States to specify additional restrictions on participant's living arrangements if approved by CMS. The commenter stated that this provision could possibly be used by States to overly restrict self-directed PAS.

Response: We will be reviewing any State proposal further restricting participant living arrangements to ensure all proposals further enable the participant to engage in meaningful self-direction of PAS and are not a restriction to self-directed PAS.

Based upon consideration of public comments received, we are finalizing § 441.460, with revision, to clarify the living arrangement prohibition is for a living arrangement where the living arrangement and a PAS provider are one and the same individual or entity.

Statewideness, Comparability, and Limitations on Number Served (§ 441.462)

To reflect the requirements at section 1915(j)(3) of the Act, we proposed that States may provide self-directed PAS without regard to the requirements of statewideness, comparability of services, or the number of individuals served.

Comment: Some commenters disagreed with CMS that the Medicaid requirements for statewideness and comparability should be disregarded. One commenter stated that States would not offer the self-direction option to certain population groups that the State perceived as unable to self-direct their PAS. Another commenter thought that to disregard comparability and statewideness would unfairly disadvantage agencies that have to meet stricter or more burdensome requirements. In contrast, one commenter urged that we ''encourage'' or ''require'' States that have never implemented or had oversight for a self-directed PAS program to first implement a program in a particular region and to a particular population or both. Alternatively, the commenter recommended that the number of people served should be limited.

Response: The regulation at § 441.462 reflects the requirement in section 1915(j)(3) of the Act that permits a State to provide self-directed PAS without regard to statewideness, comparability of services, or the number of individuals served. We believe that by providing States this flexibility, States could allow for incremental growth in offering self-directed PAS under the State plan option. As States gain more experience, they can amend their State plans to allow self-directed PAS statewide, to different populations and to more individuals. We note § 441.462 reflects the provisions of section 1915(j)(3) of the Act, and is not intended to disadvantage agencies that provide traditionally delivered services or to adversely affect certain population groups. We believe that all population groups can successfully self-direct their PAS if they have the appropriate information, counseling, training, and assistance they need.

Comment: A commenter sought clarification about the ''populations'' that could be targeted. Moreover, this commenter suggested we clarify that the State may subject each population to its own enrollment cap and specific eligibility criteria if the State so chooses.

Response: Section 1915(j)(1) of the Act sets forth the initial eligibility criteria for participation in a self-directed PAS State plan option. Specifically, section 1915(j)(1) requires that the self-directed PAS State plan opportunity be available to individuals for whom there has been a determination that, but for the provision of such services, would require and receive State plan personal care services or section 1915(c) waiver services. We believe that section 1915(j)(3), regarding comparability, permits States to target persons who are eligible for and receiving State plan personal care services or section 1915(c) waiver services. Section 1915(j) of the Act does not broaden or narrow a State's definitions of the State's personal care services benefit or section 1915(c) waiver services.

Comment: A commenter asked whether the services described in the rule are mandatory under the early and periodic screening, diagnostic and treatment (EPSDT) system.

Response: This rule implements section 1915(j) of the Act allowing States the option to amend their State plans to offer individuals the opportunity to self-direct their PAS. Therefore, Section 1915(j) of the Act offers the self-directed service delivery model as an alternative to traditionally delivered services. There are no new services that can be self-directed; rather, participants are afforded the opportunity to self-direct State plan personal care services and section 1915(c) waiver services that they are already receiving. Accordingly, there is no ''service'' under section 1905(a) of the Act that must be provided under the EPSDT benefit.

After consideration of the public comments received, we are finalizing § 441.462 without revision.

State Assurances (§ 441.464)

We proposed to reflect the requirements at section 1915(j)(2) of the Act that States must provide several assurances: (1) That necessary safeguards have been taken to protect the health and welfare of individuals furnished services under the program and the financial accountability for funds expended for self-directed services; (2) that States perform an evaluation of the need for personal care under the State Plan or services under a section 1915(c) waiver program; (3) that individuals who are likely to require personal care under the State plan, or home and community-based services under a section 1915(c) waiver program are informed of the feasible alternatives, when available; (4) that States must provide a support system that meets several delineated conditions; (5) that the State must provide to CMS an annual report on the number of individuals served and the total expenditures on their behalf in the aggregate; and (6) that the State must provide to CMS an evaluation of the overall impact of the self-directed PAS option on the health and welfare of participating individuals compared to non-participants every 3 years.

Necessary Safeguards (§ 441.464(a))

Comment: A few commenters stated that the Federal and state level of assurances should be the same between the self-directed and agency-delivered models of service delivery. The commenters offered several suggestions of safeguards that govern traditional agency-delivered services that CMS should require in the rule governing the self-directed PAS State plan option.

Response: We disagree that the regulations should be revised to add the safeguards in the traditional agency-delivered service model suggested by the commenters because we believe that the requirements concerning needed safeguards are sufficient and adequately address the concerns and needs in a self-directed service delivery model. Furthermore, the self-directed service delivery model has been formally evaluated in the ''Self-Determination'' and ''Cash & Counseling'' national projects and the regulatory requirements reflect the safeguard analyses and conclusions made from those national projects. We believe it is also important to note that States retain oversight and monitoring functions and must fulfill the obligations in their QA/QI plans to discover critical incidents and complaints and to subsequently remediate them.

Comment: A commenter suggested that CMS add safeguards to protect workers' rights, health, and safety.

Response: These issues are outside the scope of these regulations as they do not extend to workers' rights, health, and safety. Therefore, we are not revising the regulations as the commenter suggested. However, as this self-directed PAS opportunity is a service delivery model it is not intended to conflict with existing laws governing workers' rights, health, or safety issues. We understand the States and participants would comply with these laws and we encourage States and participants to consider affording workers these kinds of worker protections.

Comment: A commenter recommended that CMS establish a federally-mandated resolution process that States would implement when problems would arise between consumers and providers.

Response: We do not believe a mandated resolution process is either necessary or appropriate because we believe existing safeguards are sufficient to assist participants when problems arise between them and their PAS providers. We encourage participants to seek out any needed or desired training on how to be a better employer, or to consult with their supports broker or consultant or a person of their choosing, when there are employer-employee problems. There are also resources available to assist in resolving these issues, such as voluntary dispute resolution programs. If these types of programs exist in the participant's community, and they may be of help, then we encourage participants and workers to avail themselves of that opportunity if they choose to do so. States may wish to consider providing such information during the counseling session with participants prior to their enrollment in the self-directed PAS State plan option.

Comment: A commenter stated that at § 441.464(a), CMS should add ''quality of life'' in addition to health and welfare for which States must have necessary safeguards. The commenter further recommended that we add a specific listing of safeguards related to the health and welfare and the quality of life of participants to the current list of financial safeguards.

Response: We believe that States may measure ''quality of life'' issues in the quality assurance and improvement plan as well as in the three-year evaluation that the regulations require, if they choose to do so. Therefore, while we do not believe that the regulations should require ''quality of life'' safeguards, we do not prohibit States from incorporating them into the design of their QA/QI plan or their three-year evaluation. It should be noted that we will be issuing related guidance on the requirement for the three-year evaluation of the impact of the self-directed PAS option on the health and welfare of participating individuals compared to non-participants. We believe that States could measure and analyze ''quality of life'' issues such as whether participants experienced greater independence, increased community access, or were able to work. Therefore, we are not adopting the commenter's suggestion to change the regulations as we think States have the flexibility to design their QA/QI plans and their three-year evaluations to consider ''quality of life'' issues.

Financial Accountability (§ 441.464(a))

Comment: One commenter stated that the language describing necessary safeguards was too vague and would not assure financial accountability. The commenter recommended program controls and controls in the timekeeping system.

Response: We agree that there should be program controls and controls in the timekeeping system, but we believe that States should have flexibility to set up their own program controls and timekeeping controls in order to meet the financial accountability requirements. We believe that the oversight functions of the service budgets and expenditures, required to be performed by the FMS entity, the supports brokers and consultants, and States, should adequately address the commenter's concerns by providing adequate financial accountability.

Comment: One commenter recommended that the amount of the budget not be allocated on a monthly or quarterly basis as indicated in § 441.464(a)(2)(iii) because it would be too rigid. The commenter proposed that the regulation be revised to permit participants to plan for periods of greater or lesser needed coverage ''during the State's budget period.''

Response: We believe that prior planning for periods of greater or lesser utilization and the ability of States to allocate funds consistent with a participant's plan, during the State's budget period, is already provided for in the regulation. The prefatory language at section 441.464(a)(2) indicates that the listed safeguards, including allocating the budget on a monthly or quarterly basis, are permissive, not mandatory. Furthermore, we believe that the regulation at § 441.470, concerning the service budget elements, further affords the flexibility that the commenter desires. In § 441.470, the service budget must include procedures as to how the participants may adjust the budget plan, including how the participant may freely make changes to their budget plan and the circumstances, if any, that may require prior approval before a budget plan adjustment is made.

Comment: Two commenters stated that abuse of funds could occur when participants selected the cash option. The commenters recommended that participants using the cash option be required to use a qualified financial management entity; that participants and their PAS providers are closely monitored to ensure that authorized services were actually delivered and properly accounted for in timesheets; and, that CMS develop criteria to ensure the financial accountability required, including one set of national guidelines.

Response: At the core of the self-directed service delivery model is participant ''choice and control'' over their services and budgets. The ability of participants to choose to perform some or all of their employer and tax-related responsibilities is in keeping with this tenet. If a participant discovers that he is not interested in or able to assume these responsibilities, then the participant may use the service of the FMS entity. While we understand the commenters' concerns, we believe that the requirements for the State assurances at § 441.464(a), and for the supports system at § 441.454 and § 441.464(d) adequately address the commenters' concerns and provide the requested financial accountability and oversight.

Comment: One commenter stated that although financial accountability is important, States should not become overly prescriptive about the ways in which individuals spend their budgets.

Response: We agree with the comment that flexibility in the budget planning and spending should be encouraged by the State.

Evaluation of Need (§ 441.464(b))

We proposed that the State must perform an evaluation of the need for personal care under the State plan or services under a section 1915(c) waiver program for certain individuals. We received no comments on this proposal.

Notification of Feasible Alternatives (§ 441.464(c))

Comment: One commenter recommended that at the time feasible alternatives are discussed, participants be given information about agency-delivered or traditionally-delivered care and self-directed care, including licensure and certification of agency or other entity staff, required training and competency evaluation, criminal background checks, and the ability to contact the agency or entity to request a substitute caregiver if the initial caregiver does not show up.

Response: Section 1915(j)(2)(C) of the Act requires States to provide an assurance that individuals who are likely to require personal care under the State plan, or home and community-based services under a section 1915(c) waiver program, are informed of the feasible alternatives, where available, to self-directed PAS. The information on feasible alternatives would include information about agency-delivered or traditionally-delivered services. Furthermore, most participants will already be familiar with the agency-delivered or traditionally-delivered services because most will have been receiving them under their State plan personal care benefit or a section 1915(c) waiver program. Section 441.464(d), which implements this statutory provision, provides a listing of information that must be provided to participants. We believe the kind of information noted by the commenter is included in the regulation as it states that individuals must be given necessary information about self-direction, their responsibilities and potential liabilities, the choice to receive section 1915(c) waiver services regardless of delivery system, and the option to receive and manage the cash amount of their budget allocation.

Support System (§ 441.464(d))

Comment: One commenter suggested that the support system for management of funds should include check-writing and accounting as part of the training to those who wish to receive the cash option and manage their own allocation.

Response: The extent and type of training needed or desired by a participant will vary depending upon the individual. We anticipate that participants will request any needed or desired training for management of funds, or that their representatives, supports brokers, or consultants will request this training including training along the lines as that noted by the commenter. We also anticipate that the State will offer the additional training that is desired or needed.

Comment: One commenter noted that the proposed regulations lacked a practical plan to operationalize the ''freedom of choice of providers'' requirement and asked that this requirement be clarified.

Response: We believe the requirement to allow participants the freedom to choose their PAS providers will be operationalized when participants hire the person of their choosing to provide their PAS. However, as indicated by the commenter, the intent of the requirement is to allow participants freedom to choose their PAS providers and to clarify this requirement, we are revising the regulations text at § 441.464(d)(2)(vii) to now read, ''freely choose from available PAS providers.''

Comment: One commenter recommended that the regulation be revised at § 441.464(d) to acknowledge that those participants with progressive dementias will need increasing support, as will their representatives or caregivers.

Response: We believe it is not necessary to revise the regulation to indicate that persons with dementia will

require increasing support as their condition worsens. Section 441.464(d)(3) already requires ongoing support throughout the period that a participant is self-directing their PAS under this option. Consequently, support for any worsening condition, like dementia, is contemplated under the regulations at § 441.464(d)(3).

Comment: One commenter urged that CMS ''encourage'' States to contract with or otherwise delegate certain responsibilities to organizations that are privately accredited to perform the supports broker or consultant function and financial management services functions.

Response: We believe that States are free to contract with entities to perform the required supports broker or consultant and FMS functions, provided these entities have demonstrated knowledge and skill in implementing the requirements of the self-directed PAS State plan option and that the entities meet State requirements for furnishing these support functions.

Comment: One commenter recommended that CMS clarify that States or local governments do not have to actually provide the training needed by participants, but may instead delegate the needed supports, services, and training (through contractual means) to other entities, including providers.

Response: We agree as it provides States with greater flexibility to manage this option and conforms to current practice with other services. Accordingly, we revised § 441.464(d) to indicate that, ''States must provide, or arrange for the provision of, a support system that meets the following conditions.''

Comment: Another commenter stated that participants would possibly hesitate to complain about their workers for fear of retaliation. Accordingly, the commenter recommended that participants have direct access to an advocate.

Response: We agree that participants should have access to an advocate or advocacy organization and we have revised the rule at § 441.464(d)(2) (Support system) to add a new subsection (xv) that requires that participants be given information about the advocate or advocacy system in the State and how to contact the advocate or advocacy system. In the ''Cash & Counseling'' and *Independence Plus* programs, we required that an independent advocate or advocacy system be available to participants as part of the State's support system. The independent advocate or advocacy system would not have to be newly created by the State, but could possibly include the State's Protection and Advocacy System, the State and Local Long-Term Care Ombudsman Program, or any other existing advocate or advocacy system within the State's aging and disability networks. This requirement to inform participants of this right would not absolve States of their obligation to discover and investigate critical incidents and complaints that participants and others report, nor would it supplant the State's requirements to investigate complaints of abuse, neglect, or exploitation made to their protective services agencies. Moreover, the purpose of the support system is to assist participants in effectively managing their service plans and budgets. Accordingly, the supports broker should be assisting the participant in learning how to be an effective employer, including how to discharge a worker, if necessary.

Annual Report and Evaluation of Impact (§§ 441.464(e) and 441.464(f))

Comment: We invited comments on the requirements and structure of the annual report required in the rule at section 441.464(e). Commenters suggested that a varying spectrum of information be included in the annual report. Commenters suggested that the following information be included:

- The number of individuals self-directing.
- The units of service they received.
- The expenditures for persons receiving self-directed services, agency-delivered/traditionally-delivered services and those receiving a mix of modes.
- The number of participants with representatives helping them.
- The number of participants who are directing the State plan personal care services benefit.
- The number of participants who are directing section 1915(c) home and community-based services, and type of waiver.
- The average per-participant spending (by eligibility) category for those who direct their services and those who receive agency-delivered or traditionally-delivered services.
- The services and items used by those self-directing and those who receive agency-delivered or traditionally-delivered services.
- Whether LLRs are permitted to be paid providers.
- Whether the State allows the purchase of items that increase independence.
- Whether the State allows the delivery of services in alternative living arrangements.
- The number of individuals who expressed interest in the option, but were denied, and the reason for the denial.
- The number who voluntarily disenrolled and the reasons for the disenrollment.
- The number who were involuntarily disenrolled and the reasons for the disenrollment.
- The number of fiscal intermediaries.
- The number of providers.
- A summary of critical events reported by participants.

As to the structure of the report itself, other commenters made the following suggestions:

- The Secretary should make the annual reports available to the public.
- CMS should closely monitor the costs associated with the self-directed service delivery model.

Response: We appreciate the ideas that commenters submitted for the annual report requirements. We will carefully consider these comments as we develop guidance on the structure and criteria of the annual report.

Comment: One commenter stated that the reporting requirements for the annual report were burdensome and overly broad.

Response: As we noted that specific guidance about the annual report requirements will be forthcoming, it is unclear what requirements the commenter was referring to. However, we will take the commenter's perspective into consideration as we develop our guidance and will try to impose as little burden on the States as possible.

Comment: We invited comments on the requirements of what should be included in the three-year evaluation required in § 441.464(f). Two commenters had the following suggestions:

- The evaluation should separately address the experiences of those with and without cognitive impairments.
- The evaluation should address issues of quality of life of participants, family caregiver burdens and comparisons of the individuals with and without cognitive impairments.
- The evaluation should assess the effectiveness of the self-directed PAS option, especially for populations with cognitive impairments.

Another commenter suggested CMS streamline any evaluation requirements in our future guidance, given that the efficacy of consumer-directed services has been evaluated through the cash and counseling demonstration projects.

Response: We thank the commenters for their input and we will take these

recommendations under consideration as we develop guidance on the structure and implementation of the evaluation.

Comment: One commenter asked that CMS clarify what was meant by ''overall impact'' of the self-directed PAS on the health and welfare of participating individuals compared to non-participants.

Response: We do not expect that States will need to conduct a ''scientific'' research study and evaluation as was done in the national projects. We anticipate that our guidance will include minimum criteria that will form the basis of what we expect States to evaluate. We also anticipate that the guidance will include insight into the numbers of participants versus non-participants to be evaluated.

After consideration of the public comments received, we are finalizing § 441.464, with revision, to clarify that participants may freely choose from available PAS providers, that the State may provide under arrangement, the provision of support services, and that the State must provide information about advocates and the advocacy system in the State and how to access them. As explained in response to a prior comment, we also note changes were made to indicate that information provided to individuals and participants be communicated in a manner and language understood by the individual and participant and that the support system includes counseling about disenrollment, prior to when an individual enrolls.

Assessment of Need (§ 441.466)

We proposed that States must conduct an assessment of the participant's needs, strengths, and preferences and indicated that the assessment information is crucial as it supports the determination that an individual requires PAS and also supports the development of the service plan and budget.

Comment: Some commenters offered various suggestions on specifics for the assessment of need, including that it be standardized; performed by registered nurses or trained medical personnel; based on a prescribed scale; use a national standard to assess the amount of assistance needed; and that States be given latitude to develop their own assessment criteria and to use their existing assessment tools. Another commenter stated that the assessment was more burdensome than it needed to be. One commenter stated that CMS should amend the definition of ''assessment of need'' regulations at § 441.450(c) and the assessment requirements at § 441.466 to specifically add that an individual's cognitive function and mental health conditions must be assessed, where indicated, including the individual's need for ''cueing'' or supervision.

Response: Section 441.466 requires the assessment of need but does not specify the type of personnel that should perform the assessment. We agree that appropriately trained medical personnel should be trained and available, if an individual's condition warrants a need for assessment. We also believe that assessing personnel should be trained in the person-centered planning and directed process and person-centered services, or be accompanied by someone who is trained in these areas. While we have not specified the instruments or techniques that should be used to secure the required information in § 441.466(a), information about the individual's health condition and functional limitations must be included in the assessment. This should include information about cognitive function and other health information. Moreover, States have been given latitude to develop their own assessment criteria and tool, and we expect that States will use that latitude to perform the assessment of all of the individual's physical, cognitive mental health, and functional needs, as required, in order to fulfill the overall purpose of the assessment which is to obtain information ''relevant to the need for and authorization and provision of services.'' Given the importance of the assessment in light of the role it plays in self-directed PAS under this option, we do not believe that the listed information is burdensome to either assess or secure.

Comment: Two commenters recommended that CMS require that the assessment determine whether an individual is capable of directing his own care and that an individual's ability to manage his own care must be established. The commenters suggested that the rule include minimum processes to screen out individuals incapable of directing their own care or who would require specialized medical treatments.

Response: As we interpret the commenter's statements, it appears they are suggesting individuals should not be given the opportunity to self-direct their PAS under this option simply because they may need or desire supports to effectively manage their PAS and budgets. We disagree with the commenters that exclusionary criteria should be used to ''screen out'' participants. Individuals of different ages and various impairments and skill levels have successfully directed their PAS when given the supports they need or desire. However, the assessment of needs, strengths, and preferences can be considered in determining the extent to which supports may be needed or desired.

Comment: Two commenters stated that CMS should revise §§ 441.466 and 441.468 to include in the assessment and the service plan, respectively, a requirement to identify potential caregivers and to assess their willingness and capacity to provide care to individuals. Additionally, the commenters stated that the service plan should not include hours of unpaid care.

Response: We believe that the assessment of need should take into consideration an assessment of the individual's environment, including the presence or absence of unpaid care and is one of the factors relevant to the need for authorization and provision of services. However, we do not believe that the regulations should be revised to require this, and leave this determination to the States. We do not believe that the specifics of any unpaid care need to be included in the resultant service plan.

Comment: One commenter sought clarification on how States can bill for an assessment before a participant's entry into the program.

Response: Individuals who will be permitted the opportunity to self-direct their PAS under this new State plan option will already be Medicaid-eligible beneficiaries. Therefore, the assessment for self-directed PAS under this new State plan option can be properly claimed by the State.

Comment: One commenter sought clarification on how the ''assessment of need'' differs from or relates to the ''evaluation of need.''

Response: Section 1915(j)(2)(B) of the Act requires ''an evaluation of the need'' for personal care under the State plan or personal services under a section 1915(c) home and community-based services waiver program. Section 1915(j)(5) of the Act requires that States conduct an ''assessment'' of participants' needs, strengths, and preferences for self-directed PAS. Section 1915(j)(2)(B) is intended to evaluate an individual's need, generally, for personal care services or section 1915(c) waiver services. The ''assessment of need'' determines the specific needs, strengths and preferences of individuals in order to self-direct their PAS under this State plan option.

After consideration of the public comments received, we are finalizing § 441.466 without revision.

Service Plan Elements (§ 441.468)

We proposed minimum requirements that would be included in a service plan. We further proposed that the service plan must be developed using a person-centered and directed planning process. We also proposed that the State's applicable policies and procedures associated with service plan development be carried out and listed a minimum set of criteria that must be included in the State's policies and procedures. Furthermore, we proposed that if an entity that provides other State plan services is responsible for service plan development, the State must describe the safeguards that are in place to ensure that the service provider's role in the planning process is fully disclosed to the participant, and that controls are in place to avoid any possible conflict of interest. Finally, we proposed that the approved service plan conveys authority to participants to perform certain minimum tasks including recruiting and hiring their workers and determining the amount paid for a service, support, or item.

Comment: Two commenters suggested that CMS explicitly require that the participant be allowed to determine the wages paid to their providers of PAS. However, other commenters disagreed that a participant should determine the amount paid for a service, support, or item. One commenter noted that such a requirement conflicts with the commenter's State law that ''regulates county wages for PAS.'' Another commenter noted that such a requirement would limit a State's ability to establish a minimum wage standard for personal care workers or to mandate a wage increase for personal care workers. A third commenter noted that the requirement appears to be in conflict with the collective bargaining agreement in the commenter's State between the State and unions representing workers. The commenter noted that ''individual providers are unionized and the rates of pay and benefits for PAS are established through a collective bargaining process.'' The commenter asked CMS to clarify that a participant could determine the portion of the budget that goes to PAS, but that the collective bargaining agreement would govern the wage and benefit package for individual or agency PAS providers. Another commenter stated that applicable State or Federal minimum wage requirements should continue to apply.

Response: We believe that the statute requires participants to exercise control over the service plan and budget and that includes determining the amount paid for services, supports, or items. Section 1915(j)(5)of the Act vests participants with decision-making authority over their service plans and budgets. The regulations at § 441.450(b) and § 441.468(e) implementing section 1915(j)(5)of the Act specifically grant participants the authority to hire, fire, supervise, and manage their workers, and to determine the amount paid for a service, support, or item. We do not believe that State laws or collective bargaining agreements should hinder the ability of participants to determine the amount they pay their workers. As this self-directed PAS opportunity is a service delivery model it is not intended to conflict with existing laws governing these issues. We understand the States and participants would comply with these laws and collective bargaining agreements and that support and education, as needed, would be furnished to participants to inform them of any necessary requirements.

Comment: One commenter stated that the rule should be revised to specifically allow a participant to request revisions to the service plan, based on a change in needs.

Response: We agree with the commenter and have revised the rule at § 441.468(c) to add a new subsection (8) to ''[e]nsure that a participant may request revisions to a service plan, based on a change in needs or health status.''

Comment: One commenter requested clarification of the language at § 441.468(c)(6) that those responsible for service plan development ''reflect the nature of the program's target population.''

Response: We were concerned that individuals developing the service plan have the necessary background to adequately develop a service plan for the person self-directing their PAS. In particular, individuals with the ''lead'' responsibility for service plan development should have knowledge about the population that will be self-directing their PAS under this State plan option. In keeping with the overall focus of a service plan, we also believe that those responsible for service plan development have demonstrated skill to facilitate person-centered and directed planning and to include person-centered services in the service plan.

Comment: One commenter suggested that CMS add ''cognitive status'' after ''health status'' in the regulation at § 441.468(c)(7).

Response: We believe that the term ''health status'' encompasses any physical, cognitive, mental health, behavioral, or functional change observed or discovered that would necessitate a reassessment more often than annually, and therefore have not revised the regulation.

Comment: One commenter requested that we revise the rule at § 441.468(c) to clarify that States may delegate the reassessment of the need for PAS to a sub-unit of government as long as the State sets guidelines, exercises oversight, and performs quality assurance and improvement activities over these sub-units.

Response: We agree with the comment but do not believe it requires a revision in the regulations. States may delegate the reassessment of the need for PAS to an agency or sub-unit of government, provided the State retains all necessary administrative and monitoring oversight of the entity that performs reassessments for the State. We believe this will provide the State with the administrative option currently found in the provision of other Medicaid services.

Comment: One commenter noted that a verb is missing from section 441.468(c)(2) and should be inserted.

Response: We have revised the rule to make this technical correction.

Comment: One commenter suggested that the rule ''include that the older adult and person with disabilities have a choice of all the provider types available.''

Response: This new State plan option permits States the option to amend their State plans to offer individuals the opportunity to self-direct their PAS. As eligible individuals may include older adults and persons with disabilities, we do not believe a regulation change is necessary. Moreover, these individuals are free to choose to self-direct their PAS under the section 1915(j) State plan option or to remain with a traditional service delivery model. Individuals who do not wish to self-direct their PAS under this State plan option may consider other models of care available to them and for which they are eligible, such as the Program of All Inclusive Care for the Elderly (PACE). As required by both statute and regulations, a State's feasible alternatives, if applicable, should be discussed with individuals before they enroll in this new State plan option.

After consideration of public comments received, we are finalizing § 441.468, with revision, to correct a technical error and to provide that participants may request a change to the service plan, as needed.

Service Budget Elements (§ 441.470)

We proposed that a service budget must be developed and approved by the State based on the assessment of need and service plan. We also proposed

certain budget elements that govern the service budgets, including that the participants have knowledge about the specific dollar amount available for their PAS; how they may adjust the budget plan; the procedures that govern how a person, at the election of the State, may reserve funds to purchase items that increase independence or substitute for human assistance; how a person may use a discretionary amount, if applicable, to purchase items not otherwise delineated in the budget; and how participants are afforded the opportunity to request a fair hearing if a participant's request for a budget adjustment is denied or the amount of the budget is reduced.

Comment: One commenter thought that we needed to provide more detail on the steps used in developing the service budget. The commenter was also concerned that some States may ''discount'' a participant's service budget as a cost-cutting tool. The commenter stated that it could result in inadequate provision of services.

Response: We believe that the regulations at §§ 441.450 and 441.470 provide ample detail and give sufficient guidance in the development of service budgets and no further detail is necessary. There are numerous resources that can provide further guidance to States in the development of service budgets and we are available to provide technical assistance if necessary. We agree with the comment that a person's budget should not be ''discounted'' in order for a State to cut costs and do not believe that it would be proper for States to do so.

Comment: One commenter recommended that each State be required to develop a methodology for the timely recoupment of unused funds and that these funds be used for the self-directed PAS option.

Response: We believe that it is important for States to have a procedure to timely recoup unused funds. We believe that § 441.464(a), that requires States to assure the financial accountability of funds expended under this State plan option, would encompass the recoupment of unused funds. Accordingly, we are not adopting the commenter's suggestion.

Comment: Two commenters suggested that CMS add the language, ''earmarked for savings,'' to the regulations text at § 441.470(e) to permit individuals to use a discretionary amount of their budget to purchase items not otherwise delineated in the budget plan or ''earmarked for savings,'' since that is the language we used in the preamble.

Response: We agree and have revised the regulation at § 441.470(e) to indicate that the discretionary amount could be used to purchase items not otherwise delineated in the budget plan or ''reserved for permissible purchases.'' We believe the phrase ''reserved for permissible purchases'' better reflects this concept rather than ''earmarked for savings'' because permissible purchases, under this self-directed PAS State plan option, are those supports, goods, equipment, or supplies that increase independence or substitute for human assistance, and are purchased with the amount of funds that a participant is able to save or ''reserve''.

Comment: One commenter suggested that we eliminate the requirements in the regulation at § 441.470(a) and (b) with regard to informing the participant of the amount of the budget and conveying that information before the service plan is finalized.

Response: We disagree with the commenter. The requirement in § 441.470(a) that participants be informed of the ''specific dollar amount a participant may utilize for services and supports'' is crucial so that the participant, with assistance as needed or desired, can develop a service plan and budget plan that properly reflects the participant's needs, and the way in which any reserve or discretionary funds, if permitted by the State, will be budgeted. Section 441.470(b) is a requirement that describes only that the participant will be told, at the time the service plan is developed, how the participant will learn of the service budget amount, once it is determined. The requirement was not meant to prescribe a particular process.

Comment: One commenter requested clarification on whether an individual could purchase services that are not currently covered within the State plan's definition of personal care services such as supervision and cueing.

Response: When a State offers the opportunity to self-direct State plan PAS, we do not believe it would be permissible for participants to purchase services that are not included within the State's definition of their PCS benefit. However, the statute and regulations at § 441.470(d) allow a State, at the State's election, to offer participants the opportunity to reserve funds to purchase items that increase independence or substitute for human assistance, to the extent that expenditures would otherwise be made for the human assistance, including additional goods, supports, services, or supplies. If this option is offered by the State, we believe that a participant can purchase goods, supports, services, or supplies that are not included within the definition of the State's PCS benefit.

Comment: A commenter requested clarification on how States are supposed to review and approve the service budgets of PAS participants when the participants are free to determine the amount they will be spending for goods and services.

Response: Under the self-directed service delivery model, individuals determine the rate or amount paid for their services, supports, and items. Moreover, while individuals direct the decisions about the purchases to be made with their service budget, they are still responsible for remaining within the budgeted amount noted in their budget plan. To clarify, we intended that States review and approve the budget plan to ensure that the budget plan is not exceeding the budget amount, that the participant's budget plan is in keeping with the assessment of need and the identified needs in the service plan, and because we believe it is an important step to ensure the financial integrity of the self-directed State plan option.

Upon consideration of the public comments received, we are finalizing § 441.470, with revision for a technical change and to note that the service budget may include a discretionary amount, if applicable, to purchase items not otherwise delineated in the budget or reserved for permissible purchases.

Budget Methodology (§ 441.472)

We proposed that the State's budget methodology to determine a participant's service budget meet certain criteria and generally tracked the statute at section 1915(j)(5)(D). We also proposed that the State have procedures in place to safeguard participants when the budgeted amount is insufficient to meet a participant's needs. We also proposed that the State have a method of notifying participants of the amount of any limit that applies to a participant's self-directed PAS and supports. We also proposed that the budget may not restrict access to other medically necessary care and services furnished under the plan and approved by the State but not included in the budget.

Comment: One commenter requested that CMS clarify what is intended by the requirement, ''The State's method includes a calculation of the expected cost of the self-directed PAS and supports, if those services and supports were not self-directed.''

Response: As persons eligible for self-directed PAS must already be eligible for and receiving the optional State plan personal care services benefit or services in a section 1915(c) waiver, the amount of the funds available to a participant

for their self-directed PAS ''budget'' is not to exceed the amount that the State would pay for the services and supports if those services and supports were provided under the traditional service delivery model.

Comment: Several commenters requested that CMS clarify what is meant when States are required to have a procedure to safeguard participants when budgeted service amounts are insufficient to meet participants' needs. One commenter asked whether the procedures to safeguard participants included the following: Appeal rights to challenge benefit levels that participants perceived to be inadequate; institutionalization; additional financial resources when a participant states that the funds or services are insufficient; or whether CMS expects participants to forego needed services. One commenter suggested that we revise the regulation at § 441.472 to indicate that service budget increases may be appropriate when it can be shown that some change in a participant's medical condition, functional status, or living arrangement requires it.

Response: It is important to note that at any time a reassessment is performed, ultimate decision-making authority for the amount of services authorized rests with the State, according to the State's medical necessity criteria applied against an individual's assessed needs. Therefore, we have revised § 441.472(a) to indicate that the budget methodology is established by the State in such a way as to ensure the State's role in service authorization. Section 441.470(f) permits participants to request a fair hearing if a participant's request for a budget adjustment is denied or the amount of the budget is reduced. We believe that this section will encompass a situation where a participant perceives that the amount of the service budget is inadequate to meet the participant's needs. However, the preferred process in such a situation would be for a discussion to initially occur between the participant, the participant's representative, if any, the supports broker or consultant or other members of the service planning team to explore an informal resolution to the participant's concern. We believe that a reassessment of the participant's need for PAS may be a proper solution to the participant's concern. We do not necessarily agree with the other alternatives mentioned by the commenters. Institutionalization is not an acceptable option in this case, as the intent of the section 1915(j) provision is to avoid institutionalization by strengthening supports to individuals. We also do not support any process where participants forego needed services; rather, we would expect that the PAS provider, the representative, if any, the FMS entity or the supports broker or consultant would discover whether a reassessment is indicated and report this information to the State. As noted by the commenter, because reassessment is an appropriate step when the participant or representative, if any, feels the budgeted service amount is insufficient to meet a participant's needs, we have revised § 441.472 to add a new subsection (e) to indicate that a State must have a procedure to adjust a budget when a reassessment indicates a change in the participant's medical condition, functional status, or living situation.

Comment: One commenter recommended that we delete the word ''medically'' from the language in the rule at § 441.472(d). The commenter was concerned that the word ''medically'' would restrict a participant to the receipt of care or services related solely to a participant's medical condition or disease.

Response: Section 441.472(d) reflects the statutory language which states that, ''The budget may not restrict access to other medically necessary care and services furnished under the plan and approved by the State but not included in the budget.'' Moreover, we believe that the term ''medically necessary'' is a commonly recognized term of art that encompasses all the services, supplies, or equipment that a State includes under its State plan, waiver, or other Medicaid programs, and for which an eligible individual has been determined to need.

Comment: One commenter recommended that the rule include an incentive system for payment to the counseling and fiscal agencies. Specifically, the commenter recommended that a higher, one-time payment be made to the counseling or FMS entity when an individual has selected the option, followed by a one-time payment when the spending plan is developed, and finally, by a monthly fee after the individual receives the budget allowance.

Response: We believe that States should design the approach for payment to FMS entities in a manner that comports best with the State's fiscal processes and procedures.

Comment: One commenter indicated that there are insufficient standards in the rule to ensure that budgets will not be arbitrarily reduced for participants who self-direct their PAS. The commenter further suggests that States should not assume that all participants will be able to secure services at a lower cost than through the traditional service delivery model.

Response: We believe that there are sufficient standards in the regulations to ensure that budgets will not be arbitrarily reduced. The regulations require that the budget methodology be consistently applied to participants and that the budgeted amount be based on the assessment of the participant's needs, strengths, and preferences and the service plan. We believe that all these are safeguards against participants' budgets being arbitrarily reduced.

Comment: One commenter questioned the need for a budget methodology if participants are free to purchase what they need outside of any State-imposed pricing methodology. The commenter further noted that it seemed inappropriate to claim that participants would be free to determine the pay rate for their providers of PAS when they have no control over the total budget amount.

Response: We believe the commenter has confused the budget methodology with the ability of the participant to determine the amount paid for a service, support, or item. To clarify, among other things, the budget methodology is for the purpose of ensuring that the budget allocation for all participants is objective; evidenced based; utilizes valid, reliable cost data; is applied consistently to participants; is open to public inspection; and, includes a calculation of the expected cost of the self-directed PAS and supports, if those services and supports were not self-directed. Under the traditional service delivery model, the amount that the State has budgeted for an individual is based on these same factors. The only difference is that the participant in this self-directed model is directing how that amount will be used to purchase the services, supports, or items to meet his or her needs.

Upon consideration of the public comments received, we are finalizing § 441.472, with revision, to indicate that the budget methodology is established by the State in such a way as to ensure the State's role in service authorization, and to require the State to have a procedure to adjust a budget when a reassessment occurs and necessitates a change.

Quality Assurance and Improvement Plan (§ 441.474)

We proposed that the State must provide a quality assurance and improvement plan that describes the State's system of how it will perform activities of discovery, remediation, and quality improvement for self-directed

PAS. We proposed that the quality assurance and improvement plan describe the system performance measures, outcome measures, and satisfaction measures that the State must use to monitor and evaluate the self-directed State plan option.

Comment: One commenter suggested that we require the State to create a log of all critical events reported by participants.

Response: We do not accept the commenter's suggestion because we believe that the State would already be required to track the critical incidents reported by participants as part of the State's quality assurance and improvement (QA/QI) plan under § 441.474. Section 441.474 requires a State to have a QA/QI plan that includes a system to discover critical incidents or events that may pose harm to participants. Under such a system, critical incidents or events reported by participants must be tracked, and the results analyzed and evaluated, so that quality improvements that are needed to ensure participant health and welfare are continuously made under the self-directed PAS option.

Comment: One commenter indicated that State plans must address how the State will monitor quality for those with progressive, degenerative diseases (for example, Alzheimer's disease), developmental disabilities, or mental health conditions. The commenter stated that special attention to the experiences of those with cognitive impairments is critically important in a program that relies on participants to manage their own services.

Response: We agree that a State's QA/QI plan should take into consideration the changing needs of particular populations that are self-directing their PAS under this option. For example, a QA/QI plan could include adjustments for more frequent phone or face-to-face monitoring if the participants' conditions change. However, we do not believe a change to the regulation is necessary as we will evaluate a State's QA/QI plan during the review of the section 1915(j) State plan application.

Comment: Some commenters suggested specific performance, outcome and satisfaction measures be added as requirements for the QA/QI plan.

Response: We appreciate the commenters' input. Section 441.474 already requires that the QA/QI plan describe the system performance measures, outcome measures, and satisfaction measures that the State must use to monitor and evaluate the self-directed State plan option. We believe requiring certain measures and indicators at this time may be premature as we currently have an initiative underway to evaluate whether certain quality measures and indicators should apply to all Medicaid programs. To assist us in determining which quality measures and indicators are generally being used in Medicaid, we are revising § 441.474(b) to indicate that quality of care measures must be made available to CMS upon request. Moreover, if we do identify such quality measures, we may wish to apply them to the self-directed PAS State plan option. In light of this possibility, we have revised § 441.474(b) to clarify that quality of care measures must be made available to CMS upon request and note that the QA/QI plan must include indicators approved or prescribed by the Secretary.

Comment: One commenter recommended that CMS revise the regulations to reflect the statutory language which requires only ''appropriate quality assurance and risk management techniques'' instead of the current requirements for a quality assurance and improvement plan and the system performance measures, outcome measures, and satisfaction measures.

Response: We do not agree with the commenter. Section 1915(j)(5)(E) of the Act requires States to provide appropriate quality assurance techniques to establish and implement the PAS service plan and budget. As we stated in the proposed regulation, such techniques must recognize the roles and responsibilities in obtaining services in a self-directed manner and assure the appropriateness of such plan and budget based upon the participant's resources and capabilities. For approximately 30 years, we have witnessed an increasing number of Medicaid recipients who want to move into or remain in the community in order to receive community-based care and services. Simultaneously, we have seen the growth in the number of individuals who want to self-direct their community-based care and services. States face the challenge of how to ensure each participant's health and welfare while also respecting individual autonomy and choice. We believe that this challenge can be met with an effective QA/QI plan that incorporates performance of discovery, remediation, and quality improvement activities and includes system performance measures, outcome measures, and satisfaction measures. Accordingly, we believe that the appropriate techniques must reflect, at a minimum, the need for discovery, remediation, and quality improvement activities and system performance measures, outcome measures, and satisfaction measures as noted in the regulations at § 441.474(a) and (b).

Comment: One commenter recommended that we require a broad backup plan to account for situations where budgeted funds are prematurely depleted. Additionally, the commenter recommended a reassessment of an individual's ability to participate in the State plan option if the budget plan is not being followed.

Response: We believe that by ''broad backup plan'', the commenter means that we should require States to have a ''template'' prepared in advance that would address what to do in situations where budgeted funds are prematurely depleted. We disagree with the commenter because we believe that a backup plan should be individualized and tailored to a participant's identified critical contingencies or incidents that would pose a risk of harm to the participant's health or welfare. As stated previously, there are several options that a State may employ to safeguard participants who have prematurely spent the funds in their service budgets, such as the provision of additional information or counseling on budgeting. Moreover, a reassessment of an individual's ability to self-direct their PAS if the budget plan is not being followed, may not be appropriate in all situations. Again, it would depend on whether additional information or training has helped the participant to stay within the budget restrictions. However, we agree with the commenter insofar as a change in the participant's health status may be the cause of the participant's inability to stay within budget restrictions. As we noted previously in response to a prior comment, in such a situation, a reassessment of the participant's health status would be appropriate.

After consideration of public comments received, we are finalizing § 441.474, with revision, to require that quality measures be available to CMS upon request and include indicators approved or prescribed by the Secretary.

Risk Management (§ 441.476)

We proposed that the State must specify the risk assessment methods it uses to identify potential risks to the participant and the tools or instruments it uses to mitigate identified risks. We further proposed that the State must ensure that each service plan includes the risks that an individual is willing and able to assume, and the plan for how identified risks will be mitigated. Finally, we proposed that the State must ensure that the risk management plan is the result of discussion and negotiation among the persons designated by the

State to develop the service plan, the participant, the participant's representative, if any, and others from whom the participant may seek guidance.

Comment: One commenter urged that CMS require States to specify how they will assess and address potential risks for those with impaired cognition.

Response: The statute and the regulations note that States must specify risk assessment methods, tools, or instruments the State uses to mitigate identified risks, and a plan for how risks will be mitigated. We do not believe that it is necessary to specify how persons with impaired cognition will be assessed and how the potential risks for these individuals will be addressed. As stated in the proposed regulations, how much risk an individual is willing and able to assume is a matter of discussion and negotiation among the persons designated by the State to develop the service plan, the participant, the participant's representative, if any, and others from whom the participant may seek guidance. This process provides flexibility to the State and to the participants to reflect the participants' needs and resources in the service plan and budget plan. We believe this process would adequately address situations where participants have impaired cognition and have not revised the regulations.

Comment: In discussing the tools that may be used, we invited comment on whether criminal background checks should be mandatory under the State plan option or left to the discretion of the States, as is the current practice in programs that offer self-direction. Several commenters provided comments on whether criminal background checks should be mandatory with one commenter stating we should include national background checks for any provider of PAS that has one-to-one contact with participants. Other commenters offered suggestions on how the background checks should be reimbursed. Some commenters indicated that an individual's spouse, parent, close relative, or friend who is to be hired as a provider of PAS should not have to undergo a criminal background check. Some commenters also thought that the individual should retain the decision of whether to hire a person whom the individual or participant knows to have, or discovers to have, a criminal background.

Response: We recognize the commenters' perspective that recommended that criminal background checks be mandatory under this State plan option. However, we agree with the commenters who suggested that criminal background checks remain at the State's discretion and are not revising § 441.476. Section 441.476 requires States to specify any tools or instruments it uses to mitigate identified risks. We have not prescribed the tools or instruments that States must use because States should have the necessary flexibility to use the instruments or tools that they have found best meets the needs of the participants. These tools may include the use of criminal and worker background checks and States have the option to determine who falls within the scope of such background checks. In addition, if States make criminal or worker background checks available as a tool to mitigate risks to participants, then States would bear the expense of the criminal or worker background checks it performs on behalf of participants. We further believe that the individual, or individual's representative, must retain the authority to decide who the participant will hire to provide their PAS as this decision as to who to employ is inherent in self-direction.

Comment: One commenter suggested that CMS establish procedures for developing negotiated risk agreements. Moreover, the commenter stated that CMS should require State Medicaid programs to develop appropriate linkages with their State long-term care ombudsman and agencies that administer protective service to ensure that there are safeguards against abuse.

Response: Section 441.476(b) requires a State to specify the tools or instruments it uses to mitigate identified risks. As noted in the proposed regulation, we do not prescribe the tools or instruments that States must use because States should have the flexibility necessary to use the instruments or tools they have found best meet the needs of the participants. We noted that examples of risk management tools or instruments might include criminal and worker background checks; job descriptions that clearly set forth the roles and responsibilities of participant, workers, representatives, and all others involved with supporting the participant; and the use of individual risk agreements that permit the participant to acknowledge and accept the responsibility for addressing certain types of risks. Accordingly, we do not believe that CMS should establish procedures for the development of negotiated risk agreements. Moreover, while we encourage States to develop linkages with their State long-term care ombudsman program, we do not believe we should require these relationships. We have previously addressed the need for access to an independent advocate or advocacy organization in our response to the comments under § 441.464(d) (Support system) that we think would encompass programs such as the State long-term care ombudsman program and protective services programs that exist in the State. We assume and believe that States already have agencies that administer protective services to ensure that there are safeguards against abuse.

Upon consideration of public comments received, we are finalizing § 441.476 without modification.

Qualifications of Providers of Personal Assistance (§ 441.478)

We proposed that States have the option to permit participants to hire any individual capable of providing the assigned tasks, including legally liable relatives, as paid providers of the PAS identified in the service plan and budget. We proposed that participants retain the right to train their workers in the specific areas of personal assistance needed and to perform the needed assistance in a manner that comports with the participant's personal, cultural or religious preferences. Finally, we proposed that participants retain the right to establish additional staff qualifications based on participants' needs and preferences.

Comment: We invited comment on whether a minimum age requirement should be required for the providers of PAS. Three commenters opposed the imposition of a minimum age requirement in order to maximize the degree of flexibility participants have over their workers who will furnish the participant's PAS. However, one commenter cautioned that not including a minimum age requirement may run afoul of a State's child labor laws. Further, one commenter stated that the focus should be on whether the worker is qualified to furnish the service in the service plan. Several commenters suggested that CMS demand some minimum training, worker qualifications, and competency evaluation requirements.

Response: We agree with the commenters that we should not impose a minimum age restriction on providers of PAS; rather, the focus should be on whether the worker is qualified to furnish the service in the service plan according to the participant's personal, cultural, and religious preferences.

As self-directed PAS may include services beyond personal care, any minimum training, worker qualifications, or competency evaluation requirements would have to be tailored to each of the different

provider types that will potentially furnish self-directed PAS under this option. We do not believe that recreating a system of minimum training, worker qualifications, and competency evaluation requirements would be appropriate because it would remove the authority vested in participants to train their providers of PAS and to determine their qualifications.

We agree that participants should have access to additional training for their workers, as needed or desired, provided by or through the State. In this regard, we have revised the regulations at § 441.450(b) to permit participants to have access to other training provided by or through the State so that their PAS providers can meet any additional qualifications that participants think are needed or desired. We also believe that § 441.478(b) should include this requirement and have revised that section similarly. The participant's supports broker or consultant, as needed or desired, should assist the participant in locating and accessing additional training.

Comment: One commenter recommended that all individual assessments include a determination of the ability of the individual to adequately train their PAS provider.

Response: We believe that the regulations afford sufficient supports to the participant, such as, the requirements that ongoing information or counseling be provided to participants, or the use of representatives, as needed, that would enable participants to adequately communicate their needs to a PAS provider and to train their PAS provider in how to meet those needs. Therefore, we are not adopting the commenter's suggestion.

Upon consideration of the public comments received, we are finalizing § 441.478, with modification to permit access to training provided by the State to allow the PAS providers to meet any additional qualifications required or desired by the participant.

Use of a Representative (§ 441.480)

We proposed that States may permit participants to appoint a representative to direct the provision of self-directed PAS on their behalf and listed the types of representatives that are permissible. We also proposed that States could mandate a representative, using criteria approved by CMS, if the participant has demonstrated, after additional counseling, information, training or assistance, the inability to self-direct PAS. We further proposed that a person acting as a representative for a participant receiving self-directed PAS is prohibited from acting as a provider of self-directed PAS to the participant.

Comment: Two commenters recommended that use of a representative should be required in the rule. In contrast, other commenters urged that CMS amend the rule to permit a representative to be ''an individual chosen by the participant'' and to permit a spouse or significant other to act as a representative. One commenter noted that it is inappropriate for the participant to appoint a parent or guardian as the representative, since this is the fundamental responsibility of a parent or guardian. Several other commenters stated that the rule should permit representatives to be paid providers of PAS to allow for situations where workers are in short supply, or where a representative is the participant's preferred or only available provider. One commenter was concerned about the use of ''legally liable relatives'' as paid providers of PAS because the situation would be susceptible to abuse and because the potential exists for violations of State Nurse Practice Acts that delegate skilled nursing care to unpaid but not paid caregivers. Another commenter suggested that we add a definition of ''representative'' to the rule. One commenter suggested that the language at § 441.480, with respect to who may be a representative, should be moved to the definitions section to strengthen the protections embodied in the regulatory language.

Response: We disagree that use of a representative should be required as this could be overly prescriptive in situations where an individual is able to indicate preferences or manage his own services and budgets with assistance. We further note that while spouses are not expressly included, they are not specifically excluded in the regulations, and would likely be an individual recognized by State law to act on the participant's behalf. We believe that other representatives could be permitted by the State.

The role of the representative is to assist individuals in making decisions with respect to the planning, development, management, and direction of their service plans and budget plans. We encourage States to recognize and permit other representative relationships, so that participants can exercise greater flexibility in their choice of who will assist them with their decisions.

We continue to believe that representatives should not be paid providers of PAS. While it potentially limits a participant's choice of representative or provider, we think it is important to avoid any potential conflict of interest. We also learned from the experiences of the States participating in the original ''Cash & Counseling'' demonstration, that it is important to include this limitation in order to avoid the situation of a representative overseeing or making decisions that directly impact them, such as approving their own rate of pay, their own timesheets, and the like. Accordingly, in order to promote participant health and welfare and program integrity, and to ensure that participants actually receive their authorized PAS, we included this necessary protection in the regulation at § 441.480(b). Moreover, we believe that there are sufficient participant and programmatic protections in the regulations that would detect concerns about violations of Nurse Practice Acts. Finally, we disagree that the rule should be amended to add those who may be a representative, or that a separate definition is necessary, because we believe that representative eligibility will vary under State law and agency procedure. Therefore, we have left the regulations unchanged.

Comment: One commenter suggested that the rule address the ability of potential representatives to freely choose or to decline to perform the tasks associated with being the representative; to understand their responsibilities; and to get support, training, and counseling as needed to carry out their responsibilities.

Response: We do not believe that the details of the representative's training and understanding of their responsibilities is needed as we believe that the States will perform this function as part of the pre-enrollment counseling and as necessary on an ongoing basis.

Comment: One commenter suggested that CMS require a representative agreement that lists the tasks the representative agrees to perform on behalf of the participant.

Response: We encourage the voluntary use of an agreement if it would be beneficial to the participant and the representative, but do not believe a requirement for such an agreement should be dictated. We believe that some representatives who are clear about their tasks and responsibilities would find such a requirement unnecessary and burdensome. We further believe that States should have the discretion whether to impose such a requirement on representatives of participants self-directing their PAS under this State plan option.

Upon consideration of public comments received, we are finalizing § 441.480 without modification.

Permissible purchases (§ 441.482)

We proposed that participants may, at the State's option, use their service budgets to pay for items that increase a participant's independence or substitute for human assistance, to the extent that expenditures would otherwise be made for the human assistance. We also proposed that the services, supports, and items that are purchased with a service budget must be linked to an assessed participant need established in the service plan.

Comment: One commenter stated that purchases must relate back to an assessed need and must be restricted to those that relate to the individual's medical condition. Furthermore, this commenter stated, individuals in traditional models of service delivery should have access to the same purchase options as participants in the self-directed PAS State plan option, that is, to purchase items that increase independence or substitute for human assistance.

Response: Section 441.482 indicates that permissible purchases must be linked to an assessed participant need established in the service plan. We do not agree that purchases must relate to a participant's ''medical condition'' because such a limitation may be overly prescriptive and preclude the purchase of some items that may substitute for human assistance, such as a microwave. However, we have revised the regulation further to allow that permissible purchases must be related to an assessed participant need or *goal* established in the service plan. As service plans must be person-centered and identify participants' preferences, we believe that service plans often include participants' goals such as the desire to live in their own home. Therefore, if a purchase would assist a participant to live in their own home, thereby becoming more independent, then the purchase of an item that would increase independence could be consistent with the requirements in the regulation. In separate guidance, we will issue further direction on permissible purchases. As to the commenter's suggestion that individuals who receive their services in a traditional service delivery model should have the option to purchase items that increase independence or substitute for human assistance, we believe that the statute directs this option only to participants of the self-directed PAS State plan option.

Comment: One commenter noted that the use of the term ''medically necessary'' in the preamble is not correct in the context of permissible purchases. These purchases could be consistent with a service plan, but not strictly ''medically necessary.''

Response: We agree with the commenter that in the context of permissible purchases, the item need not be medically necessary. We are clarifying this point here and will take this comment into consideration as we develop the future guidance on permissible purchases.

Comment: One commenter supported the concept of allowing participants to use funds for permissible purchases but cautions that doing so allows for more opportunities for abuse. The commenter recommended more oversight to ensure the fiscal integrity of the State plan option and accountability for the funds.

Response: Section 441.464(a) requires assurances that necessary safeguards be taken to protect the health and welfare of individuals furnished services under the State plan option and to assure the financial accountability for funds expended for self-directed services, which includes permissible purchases. We believe this provides adequate oversight over the fiscal accountability of the funds and protects the overall integrity of this option.

Upon consideration of public comments received, we are finalizing § 441.482 with revision to note that permissible purchases must be linked to a participant need or goal established in the service plan.

Financial Management Services (§ 441.484)

We proposed that States may provide FMS themselves to participants self-directing their PAS, or employ another FMS entity to provide these services. Participants utilizing the cash option who directly perform those functions themselves would not require this service. We proposed that the FMS entity must comply with all applicable requirements of the IRS. We further proposed that States must provide oversight of FMS by performing certain prescribed functions. We also proposed the specific functions that FMS entities must perform and proposed that States not employing an FMS entity must perform those functions. Finally, we proposed that States will be reimbursed for the cost of FMS, either provided directly or through a financial management entity, at the administrative rate of 50 percent to reflect the statutory requirement for reimbursement of FMS.

Comment: One commenter stated that the requirement for FMS would add considerable costs to a State's Medicaid budget and also add to the oversight responsibilities borne by a State.

Response: We acknowledge that States may experience an initial outlay of funds to provide, or employ an entity to provide, the FMS required by this rule. This may be particularly true when a State has not previously offered a self-direction opportunity that included a participant's authority over their workers and services, as well as a service budget. However, we do not believe an FMS option would significantly add to States' fiscal and administrative responsibilities, as States must already provide programmatic and financial oversight of their Medicaid programs, including the functions to be performed by the FMS entity.

Comment: One commenter asserted that agencies who are supposed to serve as ''fiscal intermediaries'' are, in reality, functioning as home care agencies without any regulatory oversight. One commenter cautioned that the FMS entity cannot be allowed to operate independently without oversight by the State and without oversight responsibility for the expenditures made by a participant.

Response: We believe the commenter has misunderstood the role of the FMS entity. We note that the term ''fiscal intermediary'' may be interpreted differently by different people and States. ''Fiscal intermediaries'' are not necessarily synonymous with financial management services. Section 441.484 sets forth minimum mandatory functions that must be performed by the FMS entity and the State's responsibilities for oversight of the FMS entity. Accordingly, we believe that the rule has sufficient safeguards to ensure that the FMS responsibilities are properly carried out and supervised.

Comment: One commenter thought that reimbursing the FMS entity at the 50 percent administrative rate was improper in situations when the State offers an ''agency with choice'' model. The commenter explained that under this model, the participant may choose to delegate certain functions to the agency such as recruitment, initial and on-going training, and the identification and management of backup services. These functions should be reimbursed at the FMAP rate.

Response: Financial management services, regardless if performed by a stand-alone FMS entity or one that is part of an agency with choice model, will be reimbursed at the statutorily-required 50 percent administrative rate.

Comment: One commenter suggested that we add a requirement to § 441.484(c) that the FMS entity must maintain a separate account for each participant's budget.

Response: This is already a requirement for the FMS entity as noted in Section 441.484(c)(3).

Upon consideration of the public comments received, we are finalizing § 441.484 without modification.

IV. Provisions of the Final Regulation

Generally, this final regulation incorporates the January 18, 2007 provisions of the proposed rule. The provisions of this final regulation that differ from the proposed rule are as follows:

(1) We have revised the final regulation in relevant places by adding ''or their representatives, if applicable'' when we refer to individuals or participants. The provisions that we revised include: § 441.450(b); § 441.450(c) (that is, the definitions of ''Service budget'' and ''Service plan''); § 441.454(a), (c), (d); § 441.464(a)(2)(ii); § 441.464(d)(3)(i) and (ii); § 441.464(d)(4); § 441.468(b)(2); § 441.468(c)(1) and (2); § 441.468(d); § 441.468(e); § 441.470(c); § 441.470(c)(1); § 441.470(e); § 441.470(f); § 441.472(c); § 441.478(a), (b) and (c); § 441.482(a); and § 441.484(a).

(2) We have revised § 441.450(b) by adding a new requirement in paragraph (4) to include the authority of participants to train their workers and to access training provided by or through the State if additional worker training is required or desired by the participant, or participant's representative, if applicable.

(3) We have revised § 441.450(c), the definition of individualized backup plan, to clarify that the individualized backup plan must demonstrate an interface with the risk management provision at § 441.476.

(4) We have revised § 441.450(c) to add a definition for ''supports broker or consultant'' and to require that a supports broker or consultant be available to each participant, as part of the support system. We have defined ''supports broker or consultant'' to mean an individual who supports participants in directing their PAS and service budgets. The supports broker or consultant is an agent of the participants and takes direction from the participants, or their representatives, if applicable, about what support is needed or desired. The supports broker or consultant is primarily responsible for facilitating participants' needs in a manner that comports with the participants' preferences. The primary functions of the supports broker or consultant are to inform, counsel, train, and assist the participant, or the participant's representative, if applicable, with whatever is needed to develop a service budget and effectively manage the participant's self-directed PAS and budgets. Supports brokers or consultants must be accessible to participants, maintain an ongoing relationship with participants, monitor whether participants' health status has changed, and whether expenditures of funds are being made in accordance with the service budgets. States must develop a monitoring protocol that includes regularly scheduled telephone and face-to-face contact with participants. States must also develop the training requirements and qualifications for supports brokers or consultants that include, at a minimum, the following:

- An understanding of the philosophy of self-direction and person-centered and directed planning.
- The ability to facilitate participants' independence and participants' preferences in managing PAS and budgets, including any risks assumed by participants;
- The ability to develop service budgets and ensure appropriate documentation;
- Knowledge of the PAS and resources available in the participant's community and how to access them.

The availability of a supports broker or consultant to each participant is a requirement of the support system.

(5) We have revised § 441.454(b) to add examples of the types of tax-related requirements that participants, if they have chosen the cash option, or the FMS entity, must perform.

(6) We have revised § 441.456(b) and § 441.458(c) to require that the State specify in the section 1915(j) State plan amendment the safeguards that are in place to ensure continuity of services during the transition from self-directed PAS.

(7) We have revised § 441.460(a) to insert ''PAS'' before ''providers.''

(8) We have revised § 441.464(c) to require that information on feasible alternatives be communicated to the individual in a manner and language understandable by the individual.

(9) We have revised § 441.464(d) to add a requirement that States may arrange for the provision of a support system, in addition to providing the support system themselves.

(10) We have revised § 441.464(d)(1) to add a requirement that before enrollment, the support system appropriately counsels an individual about disenrollment.

(11) We have revised § 441.464(d)(2) to add a requirement that any information provided to the participant as a part of the support system must be communicated to the participant in a manner and language understandable by the participant.

(12) We have revised § 441.464(d)(2)(vii) to insert the term ''PAS'' to the requirement that the support activities include the ability to freely choose PAS providers.

(13) We have revised § 441.464(d)(2) by adding a clause (xv) that the list of support activities include information about an advocate or advocacy systems available in the State and how a participant, or a participant's representative, can access the advocate or advocacy systems.

(14) We have revised § 441.468(c)(2) by adding the word ''allow'' at the beginning of the paragraph.

(15) We have revised § 441.468(c) to add a new paragraph (8) to include that the State ensures that a participant may request revisions to a service plan, based on a change in needs or health status.

(16) We have revised § 441.470(d) to make a technical change to insert the phrase, ''to the extent that expenditures would otherwise be made for the human assistance,'' into the requirement concerning procedures that govern how a participant, at the election of a State, may reserve funds to purchase items that increase independence or substitute for human assistance.

(17) We have revised § 441.470(e) to add the phrase, ''or reserved for permissible purchases,'' to the requirement concerning procedures that govern how a person may use a discretionary amount, if applicable.

(18) We have revised § 441.472 to revise subsection (a) to indicate that the budget methodology is established by the State in such a way as to ensure the State's role in service authorization, and to add a new subsection (e) to require a State to have a procedure to adjust a budget, subject to a State's medical necessity criteria, when a reassessment indicates a change in a participant's medical condition, functional status, or living situation.

(19) We have revised § 441.474(b) to add a new requirement that quality of care measures must be made available to CMS upon request and that the QA/QI plan must include indicators approved or prescribed by the Secretary.

(20) We have revised § 441.478(b) to add a requirement that participants, or their representatives, if applicable, also have the right to access training

provided by or through the State so that their PAS providers can meet any additional qualifications that participants think are needed.

(21) We have revised § 441.482(b) to insert the words, ''or goal,'' to the requirement that the services, supports, and items that are purchased with a service budget must be linked to an assessed participant need or goal established in the service plan.

V. Collection of Information Requirements

We solicited public comment on each of the issues for the following sections of this document that contain information collection requirements (ICRs). We received one general comment. We also received public comments on four specific sections contained in the ICRs. The comments and our responses follow:

General

Comment: Two commenters stated that the estimates in the collection of information section do not reflect differences in State Medicaid systems and the populations served and that we have severely underestimated the time and resources that are necessary to meet the requirements.

Response: Our estimates are based on the average time it may take for States to fulfill the requirements of this rule and reflect the appropriate differences in the State Medicaid systems and populations.

Note: The self-directed PAS State plan option pre-print is currently approved under OMB number 09398–1024.

Section 441.454—Use of Cash

Section 441.454(d) requires States to make available a financial management entity to a participant who has demonstrated, after additional counseling, information, training, or assistance, that the participant cannot effectively manage the cash option described in paragraph (a) of this section.

The burden associated with this requirement is the time and effort put forth by the State to counsel and to provide information, training, and or assistance to participants. We believe that it would take a State 1 hour per participant to provide this guidance. The total annual burden of this requirement would vary according to the number of participants in each State who are self-directing their PAS under this State Plan option. We received no public comment on this section. Therefore, we have not revised the collection of information estimate.

Section 441.456 Voluntary Disenrollment

Section 441.456(b) requires States to specify in the State plan the safeguards that are in place to ensure continuity of services during the transition from self-directed PAS.

The burden associated with this requirement is the time and effort put forth by the State to revise its State plan to include the safeguards. While the burden associated with this requirement is subject to the PRA, the burden associated with the State plan amendment is currently approved under OMB #0938–0933. We received no public comment on this section. Therefore, we have not revised the collection of information estimate.

Section 441.458 Involuntary Disenrollment

Section 441.458(c) requires States to specify in the State plan the safeguards that are in place to ensure continuity of services during the transition from self-directed PAS.

The burden associated with this requirement is the time and effort put forth by the State to revise its State plan to include the safeguards. While the burden associated with this requirement is subject to the PRA, the burden associated with the State plan amendment is currently approved under OMB #0938–0933. We received no public comment on this section. Therefore, we have not revised the collection of information estimate.

Section 441.464 State Assurances

Section 441.464(a) requires States to provide an assurance that necessary safeguards have been taken to protect the health and welfare of individuals furnished services under the program and to assure the financial accountability for funds expended for self-directed services.

The burden associated with this requirement is the time and effort it would take for each State to meet these conditions. To meet the requirements in § 441.464(a), we estimate it would take each State 80 hours to develop a system of safeguards that protects participants' health and welfare and ensures financial accountability for funds expended, and no further burden would be associated with this requirement. We estimate the total maximum one-time burden for this requirement to be 4,480 hours. (56 States × 80 hours = 4,480 hours)

Comment: One commenter thought that the estimate of 80 hours to develop a system of safeguards was unreasonable given that some States would be developing and promulgating state rules to implement the new safeguards, in addition to having to adjust contracts, train staff and providers in new procedures and make any needed system modifications.

Response: We do not believe that the estimate of 80 hours to develop a system of safeguards is unreasonable. All Medicaid programs must assure the health and welfare of beneficiaries and fiscal accountability, so these are not new safeguards. Furthermore, we do not believe that all States will have to develop and promulgate rules. We acknowledge that some States may need to adjust contracts, train staff and make system modifications, but do not believe, that making such changes would exceed, on average, 80 hours per State. Many States already offer the opportunity for self-direction in their section 1915(c) waiver programs, so it would not be overly difficult for these States to transition to the opportunity for self-direction offered under the self-directed PAS State plan option. We also note that there would be little, if any, burden to the States associated with the training of PAS providers, as participants bear the responsibility for training their PAS providers. Accordingly, we have not revised the collection of information estimate.

Section 441.464(b) requires States to provide an assurance that they will perform an evaluation of the need for personal care under the State plan or personal services under a section 1915(c) home and community-based services waiver program. The burden associated with this requirement is the time and effort it would take for each State to meet this condition. To meet the requirement in § 441.464(b), we estimate it would take a State 2 hours per participant to perform this evaluation of need. The total annual burden of this requirement would vary according to the number of participants in each State who are (1) entitled to medical assistance for personal care services under the State plan, or receive home and community-based services under a section 1915(c) waiver program; (2) may require self-directed PAS; and (3) may be eligible for self-directed PAS. We received no public comment on this section. Therefore, we have not revised the collection of information estimate.

Section 441.464(c) requires States to provide an assurance that individuals likely to require personal care under the State plan, or home and community-based services under a section 1915(c) waiver program, are informed of the feasible alternatives, if available, under the State's self-directed PAS State plan option, at the choice of these individuals, to the provision of personal

care services under the State plan or PAS under a section 1915(c) home and community-based services waiver program. The burden associated with this requirement is the time and effort it would take for each State to meet this condition. To meet the requirement in § 441.464(c), we estimate it would take a State 15 minutes per participant to inform individuals of feasible alternatives. The total annual burden of this requirement would vary according to the number of participants in each State who are likely to require personal care under the State plan, or home and community-based services under a section 1915(c) waiver program.

Comment: Two commenters stated that the proposed 15-minute time estimate for explaining feasible alternatives to individuals was too brief.

Response: We do not believe that the estimate of 15 minutes to inform individuals of the feasible alternatives is too short. We believe that most States will incorporate information about feasible alternatives within the context of the assessment of the individual's needs, or during some other pre-enrollment contact with the individual. We estimated that the time to advise an individual of the feasible alternatives would only be a small portion of the time spent during the assessment. Accordingly, we have not revised the collection of information estimate.

Section 441.464(d) requires States to provide a support system that meets the following conditions:

(1) Appropriately assesses and counsels an individual before enrollment.

(2) Provides appropriate information, counseling, training, and assistance to ensure that a participant is able to manage the services and budgets. The support activities must include at least the following:

(i) Person-centered planning and how it is applied.

(ii) Information about the services available for self-direction.

(iii) Range and scope of individual choices and options.

(iv) Process for changing the service plan and service budget.

(v) Grievance process.

(vi) Risks and responsibilities of self-direction.

(vii) Freedom of choice of providers.

(viii) Individual rights.

(ix) Reassessment and review schedules.

(x) Defining goals, needs, and preferences.

(xi) Identifying and accessing services, supports, and resources.

(xii) Development of risk management agreements.

(xiii) Development of an individualized backup plan.

(xiv) Recognizing and reporting critical events.

(3) Offers additional information, counseling, training, or assistance, including financial management services under either of the following conditions:

(i) At the request of the participant for any reason.

(ii) When the State has determined the participant is not effectively managing the services identified in the service plan or budget.

The burden associated with this requirement is the time and effort it would take for each State to meet these conditions. To meet the requirements in § 441.464(d)(1), we estimate it would take each State 2 hours per participant. To meet the requirements in § 441.464(d)(2), we estimate it would take each State 1 hour per participant. To meet the requirements in § 441.464(d)(3), we estimate it would take each State 1 hour per participant. The total annual burden of these requirements would vary according to the number of participants in each State who are self-directing their PAS under this State plan option. We received no public comment on this section. Therefore, we have not revised the collection of information estimate.

Section 441.464(e) requires the State to provide to CMS an annual report on the number of individuals served and the total expenditures on their behalf in the aggregate.

The annual burden associated with this requirement is the time and effort it would take for each State to gather the necessary data and provide an annual report to CMS. We estimate that it would take one State no more than 25 hours to meet this requirement; therefore, the total maximum annual burden is 1,400 hours. (56 States × 25 hours = 1,400 hours) We received no public comment on this section. Therefore, we have not revised the collection of information estimate.

Section 441.464(f) requires the State to provide to CMS an evaluation of the overall impact on the health and welfare of participating individuals compared to non-participants every three years, as determined by CMS.

The burden associated with this requirement is the time and effort it would take for each State to provide such an evaluation to CMS. We estimate that it would take one State 200 hours to prepare and submit the evaluation to CMS every 3rd year; therefore, the total maximum burden on that 3rd year would be 11,200 hours. (56 States × 200 hours = 11,200)

Comment: One commenter questioned how we arrived at the estimate of 200 hours to prepare and submit an evaluation every three years as we did not include the requirements for the report. The commenter urged use of existing data sources.

Response: We believe that our estimate of the time to prepare and submit the three-year evaluation was reasonable. Our estimate was based on the time we expected it would take a State, on average, to determine the measures it would use to compare the impact of the self-directed PAS State plan option on the health and welfare of participants and non-participants, collect and analyze data, and summarize the findings in a report. Many, if not all, States collect data on performance and outcome measures within the context of their quality management systems in their current Medicaid programs. We believe that it would be appropriate for States to use data they have already collected to satisfy the requirement for the evaluation in § 441.464(f). Therefore, we have not revised the collection of information estimate.

Section 441.468 Service Plan Elements

Section 441.468(b) requires a State to develop a service plan for each program participant using a person-centered and directed planning process to ensure the following:

(1) The identification of each program participant's preferences, choices, and abilities, and strategies to address those preferences, choices, and abilities.

(2) The option for the program participant to exercise choice and control over services and supports discussed in the plan.

(3) Assessment of, and planning for avoiding, risks that may pose harm to a participant.

The burden associated with this requirement is the time and effort it would take for each State to meet these conditions. We estimate it would take each State 3 hours per participant to meet this requirement. The total annual burden of this requirement would vary according to the number of participants in each State who are self-directing their PAS under this State plan option. We received no public comment on this section. Therefore, we have not revised the collection of information estimate.

Section 441.468(d) states that when an entity that is permitted to provide other State plan services is responsible for service plan development, the State must describe the safeguards that are in place to ensure that the service provider's role in the planning process is fully disclosed to the participant and

controls are in place to avoid any possible conflict of interest.

The burden associated with this requirement is the time and effort it would take for the State to fully disclose the required information. We estimate that it would take one State 15 minutes per participant to meet this requirement. The total annual burden of this requirement would vary according to the number of participants in each State who are self-directing their PAS under this State Plan option. We received no public comment on this section. Therefore, we have not revised the collection of information estimate.

Section 441.468(e) requires that an approved self-directed service plan conveys authority to the participant to perform, at a minimum, the following tasks: recruit and hire workers to provide self-directed services, including specifying worker qualifications; fire workers; supervise workers in the provision of self-directed services; manage workers in the provision of self-directed services (determining worker duties, scheduling workers, training workers in assigned tasks, and evaluating workers' performance); determine the amount paid for a service, support, or item; and review and approve provider invoices.

While this information collection is subject to the PRA, we believe this requirement meets the requirements of 5 CFR 1320.3(b)(2), and as such, the burden associated with this requirement is exempt from the PRA. We received no public comment on this section. Therefore, we have not revised the collection of information estimate.

Section 441.470 Service Budget Elements

Section 441.470 states that a service budget must be developed and approved by the State based on the assessment of need and service plan and must include the following:

(a) The specific dollar amount a participant may utilize for services and supports.

(b) How the participant is informed of the amount of the service budget before the service plan is finalized;

(c) The procedures for how the participant may adjust the budget, including the following:

(1) How the participant may freely make changes to the budget.

(2) The circumstances, if any, that may require prior approval before a budget adjustment is made.

(3) The circumstances, if any, that may require a change in the service plan.

(d) The procedure(s) that governs how a person, at the election of the State, may reserve funds to purchase items that increase independence or substitute for human assistance including additional goods, supports, services or supplies.

(e) The procedure(s) that governs how a person may use a discretionary amount, if applicable, to purchase items not otherwise delineated in the budget.

(f) How participants are afforded the opportunity to request a fair hearing under § 441.300 if a participant's request for a budget adjustment is denied or the amount of the budget is reduced.

The burden associated with this requirement is the time and effort put forth by the State to develop a service budget. We estimate it would take a State 3 hours per participant to meet this requirement. The total annual burden of this requirement would vary according to the number of participants in each State who are self-directing their PAS under this State plan option. We received no public comment on this section. Therefore, we have not revised the collection of information estimate.

Section 441.472 Budget Methodology

Section 441.472(b) requires a State to have procedures in place to safeguard participants when the budgeted service amount is insufficient to meet a participant's needs.

The burden associated with this requirement is the time and effort it would take for a State to develop its procedures on how to handle this. We estimate that it would take one State 16 hours to develop these procedures and no further burden would be associated with this requirement. The one-time maximum burden associated with this requirement is 896 hours. (56 States × 16 hours = 896 hours) We received no public comment on this section. Therefore, we have not revised the collection of information estimate.

Section 441.472(c) requires a State to have a method of notifying participants of the amount of any limit that applies to a participant's self-directed PAS and supports.

The burden associated with this requirement is the time and effort it would take for the State to provide this notification. We estimate it would take one State 15 minutes per participant to meet this requirement. The total annual burden of this requirement would vary according to the number of participants in each State who are self-directing their PAS under this State plan option. We received no public comment on this section. Therefore, we have not revised the collection of information estimate.

Section 441.474 Quality Assurance and Improvement Plan

Section 441.474(a) requires States to provide a quality assurance and improvement plan that describes the State's system of how it would conduct activities of discovery, remediation, and quality improvement in order to learn of critical incidents or events that affect participants, correct shortcomings, and pursue opportunities for improvement; and

(b) The quality assurance and improvement plan shall also describe the system performance measures, outcome measures, and satisfaction measures that the State would use to monitor and evaluate the self-directed State plan option.

The burden associated with this requirement is the time and effort it would take for the State to customize its quality assurance and improvement plan to the self-directed service delivery model. We estimate that it would take one State 100 hours to customize its quality assurance and improvement plan and no further burden would be associated with this requirement. The one-time maximum burden associated with this requirement is 5,600 hours. (56 States × 100 hours = 5,600 hours)

Comment: One commenter urged that CMS clarify that there will be ongoing burdens associated with quality assurance and improvement activities and not just the one-time burdens indicated in the rule.

Response: As States always retain the ultimate oversight and administrative authority for any Medicaid program, we think that any ongoing burden is subsumed within the State's normal course of doing business. Accordingly, we have not revised the collection of information estimate to account for an ongoing burden as suggested by the commenter.

Section 441.484 Financial Management Services

Section 441.484(a) proposes that States may choose to provide financial management services to participants self-directing PAS, with the exception of those participants utilizing the cash option who directly perform those functions.

Section 441.484(c) proposes to require that the financial management entity provide functions including, but not limited to, the following:

(1) Collect and process timesheets of the participant's workers.

(2) Process payroll, withholding, filing and payment of applicable Federal, State, and local employment-related taxes and insurance.

(3) Maintain a separate account for each participant's budget.

(4) Track and report disbursements and balances of participant funds.

(5) Process and pay invoices for goods and services approved in the service plan.

(6) Provide to participants periodic reports of expenditures and the status of the approved service budget.

Section 441.484(d) requires States not utilizing a financial management entity must perform the functions listed in paragraph (c) of this section on behalf of participants self-directing PAS, with the exception of those participants utilizing the cash option who directly perform those functions.

The burden associated with this requirement is the time and effort it would take for the financial management entity or State to develop and perform the listed functions. We estimate it would take a financial management entity or the State 320 hours to develop the financial management system. Once the system is in place, the annual burden associated with these functions would vary according to the number of participants in each State who are self-directing their PAS under this State Plan option. We estimate the maximum one-time burden on the States to develop the financial management system to be 17,920 hours during the first year. (56 States × 320 hours = 17,920)

Note: Annual burden in the following years will vary. We have no data on how many financial management entities would be affected by this requirement; therefore, we are unable to provide total annual burden associated with financial management entities. We received no public comment on this section. Therefore, we have not revised the collection of information estimate.

The total aggregate burden for the requirements in this final regulation that affect States annually is estimated to be 1,400 hours. The total aggregate burden associated with one-time requirements on States is estimated to be 28,896. The total aggregate burden associated with the burden placed on States every 3rd year is estimated to be 11,200 hours.

Note: We are unable to provide aggregate burden totals for those requirements affecting participants because burden will vary according to the number of participants in each State who are self-directing their PAS under this State Plan option. We are also unable to provide aggregate burden for financial management entities affected by § 441.484(a).

This document imposed information collection and recordkeeping requirements. Consequently, it was reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Regulatory Impact Statement

A. Overall Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866, as amended, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This final regulation does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6.5 million to $31.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. An RFA was not prepared because the Secretary has determined that this final regulation would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. Analysis for section 1102(b) of the Act was not prepared because the Secretary has determined that this final regulation would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $130 million. This final regulation would have no consequential effect on State, local, or tribal governments in the aggregate, or on the private sector near the threshold amount of $130 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final regulation) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As this final regulation would not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

B. Anticipated Effects

FFP will be available for self-directed PAS if the State elects to offer this opportunity through the approved State plan. As self-direction is an alternative service delivery model, it is expected that the impact on Medicaid spending would not be very large. The use of self-directed PAS is estimated to cost a total of $225 million in FY 2008 to FY 2012, of which, $127 million is Federal share.

In making this estimate, we considered that costs might increase due to new covered expenses (such as microwave ovens or accessibility ramps) as well as new applicants being attracted to the Medicaid program, because of the permissibility of payments to relatives. Costs could decrease because beneficiaries might require less help and less expensive help. We also noted that some States have already implemented self-directed programs under other Medicaid authorities and thus, in those States, there would be little cost effect to the statute or this new regulation. We first estimated that the projected impact of all our proposals would amount to an overall 0.5 percent increase in personal care service expenditures, if all States and Territories implemented this self-direction PAS State plan option. We then accounted for a partial starting year, a phase-in period and the fact that this is a State plan option. Our final estimate is as noted in the table below.

SECTION 1915(J) SELF-DIRECTED PERSONAL ASSISTANCE SERVICES PROGRAM (CASH & COUNSELING)

[Dollars in Millions]

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	Total FY 2008–2012
Federal Cost	12	20	29	32	34	127
State Cost	9	15	22	24	26	96
Total *	22	35	51	56	61	225

* Amounts may not equal total due to rounding.

C. Alternatives Considered

In considering alternatives to the proposals presented in this proposed rule, we considered the current practices under section 1115 demonstrations and section 1915(c) waiver programs that implemented self-direction. In particular, we considered whether to allow States the flexibility to offer the option of disbursing cash prospectively to participants. We learned from the experience of the section 1115 demonstrations that participants were able to successfully manage the funds in their budget and maintain financial accountability, with some general guidance and oversight. In light of our desire to provide flexibility to the beneficiaries and to better reflect the intent of the PAS State plan option, we proposed this option.

We also considered the extent to which to include prescriptive support activities that States must include in their support system. We proposed a minimum list of support activities to ensure that participants have the necessary tools to successfully manage their services and budgets. We were concerned that if States were not required to include such activities as part of the support system within the PAS State plan option, the likelihood of successfully self-directing PAS would diminish. As we learned from our experience with the section 1115 demonstrations and section 1915(c) waiver programs, support activities have a crucial role in leading to the success of any self-directed PAS program.

D. Conclusion

As indicated in the estimated expenditures table above, we project the Federal Medicaid program cost of this final rule to be $127 million over the period from FY 2008 to FY 2012. In addition, we project the total State cost of this final rule to be $96 million over the period from FY 2008 to FY 2012.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 441

Aged, Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, and Reporting and recordkeeping requirements.

■ The Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

■ 1. The authority citation for part 441 continues to read as follows:

Authority: Sec 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Amend part 441 by adding new subpart J to read as follows:

Subpart J—Optional Self-Directed Personal Assistance Services Program

Sec.

Subpart J—Optional Self-Directed Personal Assistance Services Program

§ 441.450 Basis, scope, and definitions.

(a) *Basis.* This subpart implements section 1915(j) of the Act concerning the self-directed personal assistance services (PAS) option through a State Plan.

(b) *Scope.* A self-directed PAS option is designed to allow individuals, or their representatives, if applicable, to exercise decision-making authority in identifying, accessing, managing and purchasing their PAS. This authority includes, at a minimum, all of the following:

(1) The purchase of PAS and supports for PAS.

(2) Recruiting workers.

(3) Hiring and discharging workers.

(4) Training workers and accessing training provided by or through the State if additional worker training is required or desired by the participant, or participant's representative, if applicable.

(5) Specifying worker qualifications.

(6) Determining worker duties.

(7) Scheduling workers.

(8) Supervising workers.

(9) Evaluating worker performance.

(10) Determining the amount paid for a service, support or item.

(11) Scheduling when services are provided.

(12) Identifying service workers.

(13) Reviewing and approving invoices.

(c) *Definitions.* As used in this part—

Assessment of need means an evaluation of the needs, strengths, and preferences of participants for services. This includes one or more processes to obtain information about an individual, including health condition, personal goals and preferences, functional limitation, age, school, employment, household, and other factors that are relevant to the authorization and provision of services. Assessment information supports the development of the service plan and the subsequent service budget.

Individualized backup plan means a written plan that meets all of the following:

(1) Is sufficiently individualized to address each participant's critical contingencies or incidents that would pose a risk of harm to the participant's health or welfare;

(2) Must demonstrate an interface with the risk management provision at § 441.476 which requires States to assess and identify the potential risks to the participant (such as any critical health needs), and ensure that the risks and how they will be managed are the result of discussion and negotiation among the persons involved in the service plan development;

(3) Must not include the 911 emergency system or other emergency system as the sole backup feature of the plan; and

(4) Must be incorporated into the participant's service plan.

Legally liable relatives means persons who have a duty under the provisions of State law to care for another person. Legally liable relatives may include any of the following:

(1) The parent (biological or adoptive) of a minor child or the guardian of a minor child who must provide care to the child.

(2) Legally-assigned caretaker relatives.

(3) A spouse.

Self-directed personal assistance services (PAS) means personal care and related services, or home and community-based services otherwise available under the State plan or a 1915(c) waiver program that are provided to an individual who has been determined eligible for the PAS option. Self-directed PAS also includes, at the State's option, items that increase the individual's independence or substitutes (such as a microwave oven or an accessibility ramp) for human assistance, to the extent the expenditures would otherwise be made for the human assistance.

Self-direction means the opportunity for participants or their representatives to exercise choice and control over the budget, planning, and purchase of self-directed PAS, including the amount, duration, scope, provider, and location of service provision.

Service budget means an amount of funds that is under the control and direction of a participant, or the participant's representative, if any, when the State has selected the State plan option for provision of self-directed PAS. It is developed using a person-centered and directed process and is individually tailored in accordance with the participant's needs and personal preferences as established in the service plan.

Service plan means the written document that specifies the services and supports (regardless of funding source) that are to be furnished to meet the needs of a participant in the self-directed PAS option and to assist the participant to direct the PAS and to remain in the community. The service plan is developed based on the assessment of need using a person-centered and directed process. The service plan builds upon the participant's capacity to engage in activities that promote community life and respects the participant's preferences, choices, and abilities. The participant's representative, if any, families, friends and professionals, as desired or required by the participant, will be involved in the service-planning process.

Support system means information, counseling, training, and assistance that support the participant (or the participant's family or representative, as appropriate) in identifying, accessing, managing, and directing their PAS and supports and in purchasing their PAS identified in the service plan and budget.

Supports broker or consultant means an individual who supports participants in directing their PAS and service budgets. The supports broker or consultant is an agent of the participants and takes direction from the participants, or their representatives, if applicable, about what information, counseling, training or assistance is needed or desired. The supports broker or consultant is primarily responsible for facilitating participants' development of a service budget and effective management of the participants' PAS and budgets in a manner that comports with the participants' preferences. States must develop a protocol to ensure that supports brokers or consultants: are accessible to participants; have regularly scheduled phone and in-person contacts with participants; monitor whether participants' health status has changed and whether expenditure of funds are being made in accordance with service budgets. States must also develop the training requirements and qualifications for supports brokers or consultants that include, at a minimum, the following:

(1) An understanding of the philosophy of self-direction and person-centered and directed planning;

(2) The ability to facilitate participants' independence and participants' preferences in managing PAS and budgets, including any risks assumed by participants;

(3) The ability to develop service budgets and ensure appropriate documentation; and

(4) Knowledge of the PAS and resources available in the participant's community and how to access them.

The availability of a supports broker or consultant to each participant is a requirement of the support system.

§ 441.452 Self-direction: General.

(a) States must have in place, before electing the self-directed PAS option, personal care services through the State plan, or home and community-based services under a section 1915(c) waiver.

(b) The State must have both traditional service delivery and the self-directed PAS service delivery option available in the event that an individual voluntarily disenrolls or is involuntarily disenrolled, from the self-directed PAS service delivery option.

(c) The State's assessment of an individual's needs must form the basis of the level of services for which the individual is eligible.

(d) Nothing in this subpart will be construed as affecting an individual's Medicaid eligibility, including that of an individual whose Medicaid eligibility is attained through receipt of section 1915(c) waiver services.

§ 441.454 Use of cash.

(a) States have the option of disbursing cash prospectively to participants, or their representatives, as applicable, self-directing their PAS.

(b) States that choose to offer the cash option must ensure compliance with all applicable requirements of the Internal Revenue Service, including, but not limited to, retaining required forms and payment of FICA, FUTA and State unemployment taxes.

(c) States must permit participants, or their representatives, as applicable, using the cash option to choose to use the financial management entity for some or all of the functions described in § 441.484(c).

(d) States must make available a financial management entity to a participant, or the participant's representative, if applicable, who has demonstrated, after additional counseling, information, training, or assistance, that the participant cannot effectively manage the cash option described in paragraph (a) of this section.

§ 441.456 Voluntary disenrollment.

(a) States must permit a participant to voluntarily disenroll from the self-directed PAS option at any time and return to a traditional service delivery system.

(b) The State must specify in a section 1915(j) State plan amendment the safeguards that are in place to ensure continuity of services during the transition from self-directed PAS.

§ 441.458 Involuntary disenrollment.

(a) States must specify the conditions under which a participant may be involuntarily disenrolled from the self-directed PAS option.

(b) CMS must approve the State's conditions under which a participant may be involuntarily disenrolled.

(c) The State must specify in the section 1915(j) State plan amendment the safeguards that are in place to ensure continuity of services during the transition from self-directed PAS.

§ 441.460 Participant living arrangements.

(a) Self-directed PAS are not available to an individual who resides in a home or property that is owned, operated, or controlled by a PAS provider who is not related to the individual by blood or marriage.

(b) States may specify additional restrictions on a participant's living arrangements if they have been approved by CMS.

§ 441.462 Statewideness, comparability and limitations on number served.

A State may do the following:

(a) Provide self-directed PAS without regard to the requirements of statewideness.

(b) Limit the population eligible to receive these services without regard to comparability of amount, duration, and scope of services.

(c) Limit the number of persons served without regard to comparability of amount, duration, and scope of services.

§ 441.464 State assurances.

A State must assure that the following requirements are met:

(a) *Necessary safeguards.* Necessary safeguards have been taken to protect the health and welfare of individuals furnished services under the program and to assure the financial accountability for funds expended for self-directed services.

(1) Safeguards must prevent the premature depletion of the participant directed budget as well as identify potential service delivery problems that might be associated with budget underutilization.

(2) These safeguards may include the following:

(i) Requiring a case manager, support broker or other person to monitor the participant's expenditures.

(ii) Requiring the financial management entity to flag significant budget variances (over and under expenditures) and bring them to the attention of the participant, the participant's representative, if applicable, case manager, or support broker.

(iii) Allocating the budget on a monthly or quarterly basis.

(iv) Other appropriate safeguards as determined by the State.

(3) Safeguards must be designed so that budget problems are identified on a timely basis so that corrective action may be taken, if necessary.

(b) *Evaluation of need.* The State must perform an evaluation of the need for personal care under the State Plan or services under a section 1915(c) waiver program for individuals who meet the following requirements:

(1) Are entitled to medical assistance for personal care services under the State plan or receiving home and community based services under a section 1915(c) waiver program.

(2) May require self-directed PAS.

(3) May be eligible for self-directed PAS.

(c) *Notification of feasible alternatives.* Individuals who are likely to require personal care under the State plan, or home and community-based services under a section 1915(c) waiver program are informed of the feasible alternatives, if available, under the State's self-directed PAS State plan option, at the choice of these individuals, to the provision of personal care services under the State plan, or PAS under a section 1915(c) home and community-based services waiver program. Information on feasible alternatives must be communicated to the individual in a manner and language understandable by the individual. Such information includes, but is not limited to, the following:

(1) Information about self-direction opportunities that is sufficient to inform decision-making about the election of self-direction and provided on a timely basis to an individual or the representative which minimally includes the following:

(i) Elements of self-direction compared to non-self-directed PAS.

(ii) Individual responsibilities and potential liabilities under the self-direction service delivery model.

(iii) The choice to receive PAS through a waiver program administered under section 1915(c) of the Act, regardless of delivery system, if applicable.

(iv) The option, if available, to receive and manage the cash amount of their individual budget allocation.

(2) When and how this information is provided.

(d) *Support system.* States must provide, or arrange for the provision of, a support system that meets the following conditions:

(1) Appropriately assesses and counsels an individual, or the individual's representative, if applicable, before enrollment, including information about disenrollment.

(2) Provides appropriate information, counseling, training, and assistance to ensure that a participant is able to manage the services and budgets. Such information must be communicated to the participant in a manner and language understandable by the participant. The support activities must include at least the following:

(i) Person-centered planning and how it is applied.

(ii) Information about the services available for self-direction.

(iii) Range and scope of individual choices and options.

(iv) Process for changing the service plan and service budget.

(v) Grievance process.

(vi) Risks and responsibilities of self-direction.

(vii) The ability to freely choose from available PAS providers.

(viii) Individual rights.

(ix) Reassessment and review schedules.

(x) Defining goals, needs, and preferences.

(xi) Identifying and accessing services, supports, and resources.

(xii) Development of risk management agreements.

(xiii) Development of an individualized backup plan.

(xiv) Recognizing and reporting critical events.

(xv) Information about an advocate or advocacy systems available in the State and how a participant, or a participant's representative, if applicable, can access the advocate or advocacy systems.

(3) Offers additional information, counseling, training, or assistance, including financial management services under either of the following conditions:

(i) At the request of the participant, or participant's representative, if applicable, for any reason.

(ii) When the State has determined the participant, or participant's representative, if applicable, is not effectively managing the services identified in the service plan or budget.

(4) The State may mandate the use of additional assistance, including the use of a financial management entity, or may initiate an involuntary disenrollment in accordance with § 441.458, if, after additional information, counseling, training or assistance is provided to a participant (or participant's representative, if applicable), the participant (or participant's representative, if applicable) has continued to demonstrate an inability to effectively manage the services and budget.

(e) *Annual report.* The State must provide to CMS an annual report on the number of individuals served and the total expenditures on their behalf in the aggregate.

(f) *Three-year evaluation.* The State must provide to CMS an evaluation of the overall impact of the self-directed PAS option on the health and welfare of participating individuals compared to non-participants every 3 years.

§ 441.466 Assessment of need.

States must conduct an assessment of the participant's needs, strengths, and preferences in accordance with the following:

(a) States may use one or more processes and techniques to obtain information about an individual, including health condition, personal goals and preferences for the provision of services, functional limitations, age, school, employment, household, and other factors that are relevant to the need for and authorization and provision of services.

(b) Assessment information supports the determination that an individual requires PAS and also supports the development of the service plan and budget.

§ 441.468 Service plan elements.

(a) The service plan must include at least the following:

(1) The scope, amount, frequency, and duration of each service.

(2) The type of provider to furnish each service.

(3) Location of the service provision.

(4) The identification of risks that may pose harm to the participant along with a written individualized backup plan for mitigating those risks.

(b) A State must develop a service plan for each program participant using a person-centered and directed planning process to ensure the following:

(1) The identification of each program participant's preferences, choices, and abilities, and strategies to address those preferences, choices, and abilities.

(2) The option for the program participant, or participant's representative, if applicable, to exercise choice and control over services and supports discussed in the plan.

(3) Assessment of, and planning for avoiding, risks that may pose harm to a participant.

(c) All of the State's applicable policies and procedures associated with service plan development must be carried out and include, but are not limited to, the following:

(1) Allow the participant, or participant's representative, if applicable, the opportunity to engage in, and direct, the process to the extent desired.

(2) Allow the participant, or participant's representative, if applicable, the opportunity to involve family, friends, and professionals (as desired or required) in the development and implementation of the service plan.

(3) Ensure the planning process is timely.

(4) Ensure the participant's needs are assessed and that the services meet the participant's needs.

(5) Ensure the responsibilities for service plan development are identified.

(6) Ensure the qualifications of the individuals who are responsible for service plan development reflect the nature of the program's target population(s).

(7) Ensure the State reviews the service plan annually, or whenever necessary due to a change in the participant's needs or health status.

(8) Ensure that a participant may request revisions to a service plan, based on a change in needs or health status.

(d) When an entity that is permitted to provide other State plan services is responsible for service plan development, the State must describe the safeguards that are in place to ensure that the service provider's role in the planning process is fully disclosed to the participant, or participant's representative, if applicable, and controls are in place to avoid any possible conflict of interest.

(e) An approved self-directed service plan conveys authority to the participant, or participant's representative, if applicable, to perform, at a minimum, the following tasks:

(1) Recruit and hire workers to provide self-directed services, including specifying worker qualifications.

(2) Fire workers.

(3) Supervise workers in the provision of self-directed services.

(4) Manage workers in the provision of self-directed services, which includes the following functions:

(i) Determining worker duties.

(ii) Scheduling workers.

(iii) Training workers in assigned tasks.

(iv) Evaluating workers performance.

(5) Determine the amount paid for a service, support, or item.

(6) Review and approve provider invoices.

§ 441.470 Service budget elements.

A service budget must be developed and approved by the State based on the assessment of need and service plan and must include the following:

(a) The specific dollar amount a participant may utilize for services and supports.

(b) How the participant is informed of the amount of the service budget before the service plan is finalized.

(c) The procedures for how the participant, or participant's representative, if applicable, may adjust the budget, including the following:

(1) How the participant, or participant's representative, if applicable, may freely make changes to the budget.

(2) The circumstances, if any, that may require prior approval before a budget adjustment is made.

(3) The circumstances, if any, that may require a change in the service plan.

(d) The procedure(s) that governs how a person, at the election of the State, may reserve funds to purchase items that increase independence or substitute for human assistance, to the extent that expenditures would otherwise be made for the human assistance, including additional goods, supports, services or supplies.

(e) The procedure(s) that governs how a person may use a discretionary amount, if applicable, to purchase items not otherwise delineated in the budget or reserved for permissible purchases.

(f) How participants, or their representative, if applicable, are afforded the opportunity to request a fair hearing under § 441.300 if a participant's, or participant's representative, if applicable, request for a budget adjustment is denied or the amount of the budget is reduced.

§ 441.472 Budget methodology.

(a) The State shall set forth a budget methodology that ensures service authorization resides with the State and meets the following criteria:

(1) The State's method of determining the budget allocation is objective and evidence based utilizing valid, reliable cost data.

(2) The State's method is applied consistently to participants.

(3) The State's method is open for public inspection.

(4) The State's method includes a calculation of the expected cost of the self-directed PAS and supports, if those services and supports were not self-directed.

(5) The State has a process in place that describes the following:

(i) Any limits it places on self-directed services and supports, and the basis for the limits.

(ii) Any adjustments that will be allowed and the basis for the adjustments.

(b) The State must have procedures to safeguard participants when the budgeted service amount is insufficient to meet a participant's needs.

(c) The State must have a method of notifying participants, or their representative, if applicable, of the amount of any limit that applies to a participant's self-directed PAS and supports.

(d) The budget may not restrict access to other medically necessary care and services furnished under the plan and approved by the State but not included in the budget.

(e) The State must have a procedure to adjust a budget when a reassessment indicates a change in a participant's medical condition, functional status or living situation.

§ 441.474 Quality assurance and improvement plan.

(a) The State must provide a quality assurance and improvement plan that describes the State's system of how it will perform activities of discovery, remediation and quality improvement in order to learn of critical incidents or events that affect participants, correct shortcomings, and pursue opportunities for system improvement.

(b) The quality assurance and improvement plan shall also describe the system performance measures, outcome measures, and satisfaction measures that the State must use to monitor and evaluate the self-directed State plan option. Quality of care measures must be made available to CMS upon request and include indicators approved or prescribed by the Secretary.

§ 441.476 Risk management.

(a) The State must specify the risk assessment methods it uses to identify potential risks to the participant.

(b) The State must specify any tools or instruments it uses to mitigate identified risks.

(c) The State must ensure that each service plan includes the risks that an individual is willing and able to assume, and the plan for how identified risks will be mitigated.

(d) The State must ensure that the risk management plan is the result of discussion and negotiation among the persons designated by the State to develop the service plan, the participant, the participant's representative, if any, and others from whom the participant may seek guidance.

§ 441.478 Qualifications of providers of personal assistance.

(a) States have the option to permit participants, or their representatives, if applicable, to hire any individual capable of providing the assigned tasks, including legally liable relatives, as paid providers of the PAS identified in the service plan and budget.

(b) Participants, or their representatives, if applicable, retain the right to train their workers in the specific areas of personal assistance needed by the participant and to perform the needed assistance in a manner that comports with the participant's personal, cultural, and/or religious preferences. Participants, or their representatives, if applicable, also have the right to access other training provided by or through the State so that their PAS providers can meet any additional qualifications required or desired by participants, or participants' representatives, if applicable.

(c) Participants, or their representatives, if applicable, retain the right to establish additional staff qualifications based on participants' needs and preferences.

§ 441.480 Use of a representative.

(a) States may permit participants to appoint a representative to direct the provision of self-directed PAS on their behalf. The following types of representatives are permissible:

(1) A minor child's parent or guardian.

(2) An individual recognized under State law to act on behalf of an incapacitated adult.

(3) A State-mandated representative, after approval by CMS of the State criteria, if the participant has demonstrated, after additional counseling, information, training or assistance, the inability to self-direct PAS.

(b) A person acting as a representative for a participant receiving self-directed PAS is prohibited from acting as a provider of self-directed PAS to the participant.

§ 441.482 Permissible purchases.

(a) Participants, or their representatives, if applicable, may, at the State's option, use their service budgets to pay for items that increase a participant's independence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance.

(b) The services, supports and items that are purchased with a service budget must be linked to an assessed participant need or goal established in the service plan.

§ 441.484 Financial management services.

(a) States may choose to provide financial management services to participants, or their representatives, as applicable, self-directing PAS, with the exception of those participants utilizing the cash option who directly perform those functions, utilizing a financial management entity, through the following arrangements:

(1) States may use a reporting or subagent through its fiscal intermediary in accordance with section 3504 of the IRS Code and Revenue Procedure 80–4 and Notice 2003–70; or

(2) States may use a vendor organization that has the capabilities to perform the required tasks in accordance with Section 3504 of the IRS Code and Revenue Procedure 70–6. When private entities furnish financial management services, the procurement method must meet the requirements set forth in 45 CFR 74.40 through 74.48.

(b) States must provide oversight of financial management services by performing the following functions:

(1) Monitoring and assessing the performance of financial management entity, including assuring the integrity of financial transactions they perform.

(2) Designating a State entity or entities responsible for this monitoring.

(3) Determining how frequently financial management entity performance will be assessed.

(c) A financial management entity must provide functions including, but not limited to, the following:

(1) Collect and process timesheets of the participant's workers.

(2) Process payroll, withholding, filing and payment of applicable Federal, State and local employment-related taxes and insurance.

(3) Maintain a separate account for each participant's budget.

(4) Track and report disbursements and balances of participant funds.

(5) Process and pay invoices for goods and services approved in the service plan.

(6) Provide to participants periodic reports of expenditures and the status of the approved service budget.

(d) States not utilizing a financial management entity must perform the functions listed in paragraph (c) of this section on behalf of participants self-directing PAS, with the exception of those participants utilizing the cash option who directly perform those functions.

(e) States will be reimbursed for the cost of financial management services, either provided directly or through a financial management entity, at the administrative rate of 50 percent.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 18, 2008.s

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: August 6, 2008.

Michael O. Leavitt,

Secretary.

[FR Doc. E8–23102 Filed 9–29–08; 11:15 am]

BILLING CODE 4120–01–P

Federal Register

Friday,
October 3, 2008

Part V

Department of Health and Human Services

Centers for Medicare & Medicaid Services Medicare Program; Hospital Inpatient Prospective Payment Systems and Fiscal Year 2009 Rates: Final Fiscal Year 2009 Wage Indices and Payment Rates Including Implementation of Section 124 of the Medicare Improvement for Patients and Providers Act of 2008; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1390–N]

RIN 0938–AP15

Medicare Program; Hospital Inpatient Prospective Payment Systems and Fiscal Year 2009 Rates: Final Fiscal Year 2009 Wage Indices and Payment Rates Including Implementation of Section 124 of the Medicare Improvement for Patients and Providers Act of 2008

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice contains tables listing the final wage indices, hospital reclassifications, payment rates, impacts, and other related tables effective for fiscal year (FY) 2009. The tables and impacts included in this notice reflect the extension of the expiration date for certain geographic reclassifications and special exception wage indices as required by section 124 of the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA), Public Law 110–275. These geographic reclassifications and special exception wage indices were previously set to expire on September 30, 2008 and are now extended through September 30, 2009. (Additionally, the final rates, wage indices, budget neutrality factors and tables included in this notice also reflect a correction made to the wage data for one hospital, as discussed in the correction notice for the FY 2009 IPPS final rule published elsewhere within this **Federal Register**.)

DATES: *Effective Date:* This notice is effective on October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter, (410) 786–4487.

SUPPLEMENTARY INFORMATION:

I. Background

In the August 19, 2008 **Federal Register** (73 FR 48434) (hereinafter referred to as the FY 2009 IPPS final rule), we set forth our final rule for the Medicare inpatient prospective payment system (IPPS). Due to the July 15, 2008 enactment of the Medicare Improvement for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275), we stated in the final rule that we would publish the FY 2009 wage index tables, rates, and impacts reflecting the implementation of this legislation in a **Federal Register** document subsequent to the FY 2009 IPPS final rule. (See the FY 2009 IPPS final rule, 73 FR 48588 and 48589, for a full explanation of the reasons for such subsequent publication.) This notice includes such wage index tables, rates, and impacts. (Additionally, the final rates, wage indices, budget neutrality factors and tables included in this notice also reflect a correction made to the wage data for one hospital, as discussed in the correction notice for the FY 2009 IPPS final rule published elsewhere within this **Federal Register**.)

II. Final FY 2009 Wage Indices and Rates

A. Final FY 2009 Wage Indices

The final wage index values for FY 2009 (except those for hospitals receiving wage index adjustments under section 505 of Pub. L. 108–173) are included in Tables 4A, 4B, 4C, and 4F of the Addendum to this notice and are posted on our Web site at *http://www.cms.hhs.gov/AcuteInpatientPPS/*. For hospitals that are receiving a wage index adjustment under section 505 of Pub. L. 108–173, the hospital's final wage index will reflect the adjustment shown in Table 4J of the Addendum to this notice. In addition, Table 2 of the Addendum to this notice includes the final wage index value and occupational mix adjusted average hourly wage (from the FYs 2003, 2004, and 2005 cost reporting periods) for each hospital. Table 4D–1 of the Addendum of this notice lists the State rural floor budget neutrality factors for FY 2009.

B. Final FY 2009 Hospital Wage Index Reclassifications/Redesignations

1. Section 508 Extension

On July 15, 2008, the Medicare Improvements for Patients and Providers Act of 2008, Pub. L. 110–275 was enacted. Section 124 of Pub. L. 110–275 extends through FY 2009 wage index reclassifications under section 508 of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA) (Pub. L. 108–173) and certain special exceptions (for example, those special exceptions contained in the final rule promulgated in the **Federal Register** on August 11, 2004 (69 FR 49105 and 49107) and extended under section 117 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) (Pub. L. 110–173)).

Under section 508 of Pub. L. 108–173, a qualifying hospital could appeal the wage index classification otherwise applicable to the hospital and apply for reclassification to another area of the State in which the hospital is located (or, at the discretion of the Secretary), to an area within a contiguous State. We implemented this process through notices published in the **Federal Register** on January 6, 2004 (69 FR 661), and February 13, 2004 (69 FR 7340). Such reclassifications were applicable to discharges occurring during the 3-year period beginning April 1, 2004, and ending March 31, 2007. Section 106(a) of the Medicare Improvements and Extension Act, Division B of the Tax Relief and Health Care Act of 2006 (MIEA–TRHCA) extended any geographic reclassifications of hospitals that were made under section 508 and that would expire on March 31, 2007. On March 23, 2007, we published a notice in the **Federal Register** (72 FR 13799) that indicated how we were implementing section 106(a) of the MIEA–TRHCA through September 30, 2007. Section 117 of the MMSEA further extended section 508 reclassifications and certain special exceptions through September 30, 2008. On February 22, 2008, we published a notice in the **Federal Register** (73 FR 9807) regarding our implementation of section 117 of the MMSEA.

Section 124 of Pub. L. 110–275 has now extended the hospital reclassification provisions of section 508 and certain special exceptions through September 30, 2009 (FY 2009). Because of the timing of the enactment of Pub. L. 110–275, we were not able to recompute the FY 2009 wage index values for any hospital reclassified under section 508 and special exception hospitals in time for inclusion in the FY 2009 IPPS final rule. Instead, we stated that we would issue the final FY 2009 wage index values and other related tables, as specified in the Addendum to the FY 2009 IPPS final rule, in a separate **Federal Register** notice published subsequent to the final rule. We stated that we would analyze the data of hospitals in labor market areas affected by the MIPPA extension, including hospitals with Lugar redesignations, and make best efforts to give those hospitals a wage index value that we believe results in the highest FY 2009 wage index for which they are eligible.

This final notice reflects the reclassification withdrawal and termination decisions we have made on behalf of certain hospitals based on what we perceive would be most advantageous to the hospital and would give the hospital the highest wage index among its available options. (We note one exception where a hospital notified us prior to the publication of this notice to request that we maintain its rural reclassification, although the hospital's section 508 reclassification would have resulted in a higher wage index.) Please note that in some cases we may have

terminated a hospital's Lugar reclassification under section 1886(d)(8)(B) of the Act in order to receive the out-migration adjustment. As explained in the FY 2009 final IPPS rule, the intervening MIPAA legislation affects only those areas including hospitals whose reclassifications/special exceptions are extended, or areas to which such hospitals were reclassified for FY 2009. Therefore, we are *not* choosing wage index values for hospitals reclassified to or located in areas containing no hospitals whose reclassifications or special exceptions were extended by section 124 of Pub. L. 110–275.

We have also created special procedural rules, effective August 19, 2008 the date of publication of the FY 2009 IPPS final rule, allowing hospitals 15 days from the **Federal Register** date of publication of this separate notice to notify us if they wish to revise the decision that CMS makes on their behalf. Members of a group reclassification must ensure that all members of the group (except hospitals whose reclassifications or special exceptions were extended by section 124 of Pub. L. 110–275) have signed the revision request. Written requests to revise CMS's wage index decision (as reflected in this notice) must be received at the following address by no later than 5 p.m., eastern daylight time (e.d.t.) October 20, 2008: Division of Acute Care, Mailstop C4–08–06, 7500 Security Boulevard, Baltimore, MD 21244, Attn: Brian Slater.

If we do not receive notice from the hospital within such 15-day timeframe, the determination we have made on behalf of the hospital in this separate notice is deemed final for FY 2009, and it is as if the hospital made the determination itself, on its own behalf. (**Note**: In the case of the hospital mentioned above that made the determination itself to maintain its rural reclassification rather than to receive the higher section 508 reclassification for which it was eligible, the hospital's rural reclassification is deemed final for FY 2009. The hospital is ineligible to now request a reversal of the decision that it made on its own behalf.)

Hospitals that seek to revise the CMS decision made on their behalf in this notice may revert back only to the wage index originally accepted for FY 2009 (using the ordinary 45-day process after publication of the proposed rule). In cases where CMS has terminated or withdrawn a reclassification on a hospital's behalf in order to award the hospital the wage index associated with a section 508 reclassification, a special exception, or the hospital's home area for FY 2009, and the hospital does not reverse or modify CMS's decision within the 15-day timeframe, we will deem the hospital's reclassification is withdrawn or terminated for FY 2009 only, as section 508 reclassifications and special exceptions are only extended through FY 2009. Such hospitals, if there is at least one remaining year in their 3-year reclassification, will automatically have the Medicare Geographic Classification Review Board (MGCRB) reclassification they originally accepted for FY 2009 (within the ordinary 45-day time frame) reinstated for FY 2010. To restate, automatic reinstatement will occur only in the following situation: (1) A hospital accepted a particular reclassification for FY 2009 following the ordinary process (that is, the 45-day rule); and (2) CMS withdraws or terminates such reclassification in order for the hospital to receive a 508 wage index, a special exception wage index, or the wage index of the hospital's home area. The hospital will be reinstated for the remaining years of only the reclassification originally accepted.

For example, if, in this notice, we assign a hospital a section 508 reclassification wage index for FY 2009 and the hospital has accepted an MGCRB reclassification for FY 2008 through 2010, the hospital's previous, FY 2008 through 2010 reclassification will be automatically reinstated for the remaining year, FY 2010. By the same token, if the omission of a section 508 or special exception hospital from the calculation of the reclassification wage index in Table 4C results in the reclassification wage index decreasing to the point that a hospital should have terminated the FY 2008 through 2010 MGCRB reclassification it accepted for FY 2009 , we may terminate the reclassification on the hospital's behalf in order to receive the home wage index; however, such reclassification will then be automatically reinstated for FY 2010.

As stated in the FY 2009 IPPS final rule, in the case of overlapping reclassifications, these special procedural rules will not change our policy that hospitals are not permitted to hold one MGCRB reclassification in reserve while another is in effect. Thus, in the case of a hospital with a choice of two possible MGCRB 3-year reclassifications for FY 2009, if CMS chooses one reclassification on the hospital's behalf (and this decision is not reversed within the 15-day timeframe), then any other reclassifications are permanently terminated. Because CMS is acting on behalf of the hospital, it is as if the hospital made the decision to accept the reclassification listed in this notice, and the hospital is then prohibited under 42 CFR 412.273(b)(2)(ii) from reinstating any previous reclassifications. Likewise, if a hospital had a choice of two possible reclassifications, and we assign the hospital a 508 or special exception wage index in this notice (and the decision is not reversed within the 15-day timeframe), then only the reclassification previously accepted by the hospital (using the ordinary 45-day rule) is reinstated—any other reclassification is permanently terminated.

As stated in the FY 2009 IPPS final rule, we will not further recalculate the wage indices, budget neutrality factors, or standardized amounts now that CMS has made decisions regarding what is most advantageous to each hospital. That is, we will not further recalculate the wage indices (including any rural floors or imputed rural floors) or standardized amounts based on hospital decisions that further revise decisions made by CMS on the hospitals' behalf.

When applying section 508, we required each hospital to submit a request in writing by February 15, 2004, to the Medicare Geographic Classification Review Board (MGCRB), with a copy to CMS. We will neither require nor accept written requests for the extension required by MIPPA, since that legislation simply provides a 1 year continuation for any section 508 reclassifications and special exceptions wage index set to expire September 30, 2008.

2. Special Considerations for Special Exception Wage Indexes

As stated earlier, section 124(b) of MIPPA extended certain special exceptions through the end of FY 2009. MIPPA achieved these extensions through an amendment to the MMSEA. As amended, section 117(a)(2) of the MMSEA now reads as follows:

> SPECIAL EXCEPTION RECLASSIFICATIONS.—The Secretary of Health and Human Services shall extend for discharges occurring through the last date of the extension of reclassifications under section 106(a) of the Medicare Improvement and Extension Act of 2006 (division B of Public Law 109–432), the special exception reclassifications made under the authority of section 1886(d)(5)(I)(i) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(I)(i)) and contained in the final rule promulgated by the Secretary in the **Federal Register** on August 11, 2004 (69 Fed. Reg. 49105, 49107).

Although MIPPA amended section 117(a)(2) of the MMSEA to extend the specific special exceptions referenced above, MIPPA failed to amend section

117(a)(3) of the MMSEA. That provision states: ''For purposes of implementation of this subsection, the Secretary shall use the hospital wage index that was promulgated by the Secretary in the **Federal Register** on October 10, 2007 (72 FR 57634), and any subsequent corrections.'' We believe that the only possible interpretation of this provision is that hospitals whose special exceptions are extended under MIPPA section 124(b) are to receive the special exception wage index assigned to them for FY 2008; not a wage index based upon FY 2009 data. The MMSEA mandates that the wage index for a hospital receiving a special exception must be the wage index promulgated in the October 10, 2007 **Federal Register** and any subsequent corrections thereto. The FY 2009 wage indices cannot be viewed as corrections to the FY 2008 data, as these FY 2009 indices represent a new fiscal year cycle of ratesetting—and are not corrections of FY 2008 rates. For these reasons, if a hospital is assigned a special exception wage index in this notice under section 117(a)(2) of the MMSEA (as amended by Pub. L. 110–275), its wage index will reflect FY 2008 wage index data. (We note that these special considerations do not affect the rule discussed above allowing a hospital to retain its reclassification or home wage index if such wage index exceeds the special exception wage index, it is only in cases where a hospital receives its special exception wage index under section 117(a)(2) of the MMSEA that such wage index will be based upon FY 2008 data.)

C. Final FY 2009 Prospective Payment Systems Payment Rates for Hospital Operating and Capital Related Costs

As discussed in the FY 2009 IPPS final rule (73 FR 48759), wage data affect the calculation of the outlier threshold as well as the outlier offset and budget neutrality factors that are applied to the standardized amounts. Thus, because we were not able to calculate final wage rates as a result of the intervening legislation contained in section 124 of Pub. L. 110–275, we were only able to provide tentative figures in the FY 2009 IPPS final rule. We stated that such tentative amounts would be revised once we finalized wage index figures as a result of implementing section 124 of Pub. L. 110–275, and that a subsequent **Federal Register** document would list the final standardized amounts, outlier offsets, and budget neutrality factors effective October 1, 2008, for FY 2009. Additionally, the final rates, wage indices, budget neutrality factors and tables also reflect a correction made to the wage data for one New Hampshire hospital as discussed in the correction notice for the FY 2009 IPPS final rule published elsewhere within this **Federal Register**. This notice announces the final FY 2009 prospective payment rates for Medicare hospital inpatient operating costs and Medicare hospital inpatient capital-related costs. We calculated these final rates using the methodology adopted in the FY 2009 IPPS final rule.

We note that, because hospitals excluded from the IPPS are paid on a cost basis (and not under the IPPS), these hospitals were not affected by the tentative figures for standardized amounts, offsets, and budget neutrality factors. Therefore, the rate-of-increase percentages for updating the target amounts for hospitals excluded from the IPPS that are effective October 1, 2008 were finalized in the FY 2009 IPPS final rule (73 FR 48776) and are not included in this notice.

1. Final FY 2009 Prospective Payment Rates for Hospital Inpatient Operating Costs

a. Final Budget Neutrality Adjustments Factors for Recalibration of DRG Weights and Updated Wage Index, Reclassified Hospitals and Rural Community Hospital Demonstration Program Adjustment

Using the methodology adopted in the FY 2009 IPPS final rule, for FY 2009 we are establishing the following final budget neutrality factors (which are applied to the standardized amounts): a final FY 2009 DRG recalibration and wage index budget neutrality factor of 0.999553 (we note that the DRG recalibration and wage index budget neutrality factor changed from the final rule to this notice as a result of the change in the wage data to one New Hampshire hospital as discussed in the correction notice for the FY 2009 IPPS final rule published elsewhere within this **Federal Register**); a final reclassified hospital budget neutrality factor of 0.992088 and a final rural community hospital demonstration program adjustment factor of 0.999764.

b. Rural and Imputed Floor Budget Neutrality

As explained and finalized in the final rule, for FY 2009, hospitals will receive a blended wage index that is comprised of 20 percent of the wage index adjusted by applying the State level rural and imputed floor budget neutrality adjustment and 80 percent of the wage index adjusted by applying the national rural and imputed floor budget neutrality adjustment. This adjustment is applied to the wage index and not to the standardized amount.

Using the methodology established in the FY 2009 IPPS final rule (73 FR 48762), we are establishing the following final rural and imputed floor budget neutrality factors: a national rural and imputed floor budget neutrality adjustment factor of 0.996272; an additional adjustment factor of 0.999785 to ensure that the blended wage indices remain budget neutral (as explained in the FY 2009 IPPS final rule (73 FR 48762)). The final State-level rural and imputed floor budget neutrality adjustment factors are in table 4D–1 of this notice.

c. Final FY 2009 Standardized Amount

We calculated the final FY 2009 standardized amounts using the methodology we adopted in the FY 2009 IPPS final rule. For a complete description of this methodology, please see the FY 2009 IPPS final rule (73 FR 48759 through 48768). Tables 1A and 1B in the Addendum to this notice contain the final national standardized amount that we are applying to all hospitals, except hospitals in Puerto Rico. The final Puerto Rico-specific amounts are shown in Table 1C. The final amounts shown in Tables 1A and 1B differ only in that the labor-related share applied to the final standardized amounts in Table 1A is 69.7 percent, and the labor-related share applied to the final standardized amounts in Table 1B is 62 percent. (The labor-related share is 62 percent for all hospitals (other than those in Puerto Rico) whose wage indices are less than or equal to 1.0000.)

In addition, Tables 1A and 1B include final standardized amounts reflecting the full 3.6 percent update for FY 2009, and final standardized amounts reflecting the 2.0 percentage point reduction to the update (a 1.6 percent update) applicable for hospitals that fail to submit quality data consistent with section 1886(b)(3)(B)(viii) of the Act.

In the FY 2009 IPPS final rule, we did not supply a table that illustrated the changes from the FY 2008 national average standardized amount because at that time we were only setting the standardized amounts tentatively, but we stated that we would provide the table in the subsequent **Federal Register** notice. Therefore, in this notice, we include below a table that details the calculation of the final FY 2009 standardized amounts.

Comparison of FY 2008 Standardized Amounts to the Final FY 2009 Standardized Amount with Full Update and Reduced Update

	Full Update (3.6 percent); Wage index is greater than 1.0000	Full Update (3.6 percent); Wage index is less than or equal to 1.0000	Reduced Update (1.6 percent); Wage index is greater than 1.0000	Reduced Update (1.6 percent); Wage index is less than or equal to 1.0000
FY 2008 Base Rate, after removing geographic reclassification budget neutrality, demonstration budget neutrality, documentation and coding adjustment, NJ imputed floor budget neutrality and outlier offset (based on the labor and market share percentage for FY 2009)	Labor: 3,723.07 Nonlabor: $1,618.50	Labor: $3,311.77 Nonlabor: $2,029.80	Labor: 3,723.07 Nonlabor: $1,618.50	Labor: $3,311.77 Nonlabor: $2,029.80
FY 2009 Update Factor	1.036	1.036	1.016	1.016
FY 2009 DRG Recalibrations and Wage Index Budget Neutrality Factor	0.999553	0.999553	0.999553	0.999553
FY 2009 Reclassification Budget Neutrality Factor	0.992088	0.992088	0.992088	0.992088
FY 2009 Outlier Factor	0.948996	0.948996	0.948996	0.948996
Rural Demonstration Budget Neutrality Factor	0.999764	0.999764	0.999764	0.999764
Final FY 2009 Documentation and Coding Adjustment and Actual FY 2008 Adjustment	0.985	0.985	0.985	0.985
Final Rate for FY 2009	Labor: $3,574.50 Nonlabor: $1,553.91	Labor: $3,179.61 Nonlabor: $1,948.80	Labor: $3,505.49 Nonlabor: $1,523.91	Labor: $3,118.23 Nonlabor: $1,911.17

The final labor-related and nonlabor-related portions of the national average standardized amounts for Puerto Rico hospitals for FY 2009 are set forth in Table 1C in the Addendum to this notice. (The labor-related share applied to the Puerto Rico-specific standardized amount is either 58.7 percent or 62 percent, depending on which is more advantageous to the hospital.)

d. Final Adjustments for Area Wage Levels

The final occupational mix adjusted wage indices by geographic area are listed in Tables 4A, 4B, 4C, and 4F in the Addendum to this notice. (These tables are also available on the CMS Web site.)

e. FY 2009 Final Outlier Adjustment Factors and Fixed-loss Cost Threshold

Using the methodology we adopted in the FY 2009 IPPS final rule, we are establishing a final outlier fixed-loss cost threshold for FY 2009 equal to the prospective payment rate for the DRG, plus any IME and DSH payments, and any add-on payments for new technology, plus $20,045.

The final outlier adjustment factors that are applied to the standardized amount for the FY 2009 outlier threshold are as follows:

	Operating standardized amounts	Capital federal rate
National	0.948996	0.946458
Puerto Rico	0.954304	0.931050

2. Final FY 2009 Prospective Payment Rates for Acute Care Hospital Inpatient Capital-Related Costs

We have calculated the final FY 2009 capital Federal rates, offsets, and budget neutrality factors using the same methodology we adopted in the FY 2009 IPPS final rule (CMS–1390–F) that was used to calculate the tentative rates included in that rule. (We note that for the remainder of the section we will use the term ''FY 2009 IPPS final rule'' when referring to CMS–1390–F, which was published in the **Federal Register** on August 19, 2008.) For a complete description of this methodology, please see the FY 2009 IPPS final rule (73 FR 48769 through 48773).

a. Inpatient Hospital Capital-Related Prospective Payment Rate Update

The factors used in the update framework are not affected by the extension of the expiration date for certain geographic reclassifications and special exception wage indices as required by section 124 of the MIPPA, Pub. L. 110–275. Therefore, the update factor for FY 2009 was not revised from the capital IPPS standard Federal rate update factor discussed in section III.A.1. of the FY 2009 IPPS final rule and remains at 0.9 percent for FY 2009. A full discussion of the update framework is provided in that final rule (73 FR 48769 through 48711).

b. Outlier Payment Adjustment Factor

Based on the final thresholds as set forth in section IIC.1.e. of this notice, we estimate that outlier payments for capital-related costs will equal 5.35 percent for inpatient capital-related payments based on the final Federal rate in FY 2009. Our estimate of outlier payments for capital-related for FY 2009 remains unchanged from our estimate discussed in section III.A.2. of the FY 2009 IPPS final rule (73 FR 48771). Therefore, in determining the final FY 2009 capital Federal rate in this notice, we will apply a final outlier adjustment factor of 0.9465 for FY 2009.

As discussed in the FY 2009 IPPS final rule, we estimate that the percentage of capital outlier payments to total capital standard payments for FY 2009 will be higher than the percentages for FY 2008. The final outlier thresholds for FY 2009 are in section IIC.1.e. of this notice. For FY 2009, a case qualifies as a cost outlier if

the cost for the case plus the IME and DSH payments are greater than the prospective payment rate for the MS–DRG plus $20,045.

c. Budget Neutrality Adjustment Factor for Changes in MS–DRG Classifications and Weights and the GAFs

Using the methodology discussed in section III.A.3. of the FY 2009 IPPS final rule (73 FR 48771 through 48773), for FY 2009, we are establishing a final GAF/DRG budget neutrality factor of 1.0015, which is the product of the incremental GAF budget neutrality factor of 1.0021 and the DRG budget neutrality of 0.9995 (calculations were done with unrounded numbers). The GAF/DRG budget neutrality factors are built permanently into the capital rates; that is, they are applied cumulatively in determining the capital Federal rate. This follows from the requirement that estimated aggregate payments each year be no more or less than they would have been in the absence of the annual DRG reclassification and recalibration and changes in the GAFs. The final cumulative change in the capital Federal rate due to this adjustment is 0.9917 (the product of the incremental factors for FYs 1993 though 2008 and the final incremental factor of 1.0015 for FY 2009). (We note that averages of the incremental factors that were in effect during FYs 2005 and 2006, respectively, were used in the calculation of the final cumulative adjustment for FY 2009.)

This factor accounts for MS–DRG reclassifications and recalibration and for changes in the GAFs, which include the revisions to wage index that result from the extension of the expiration date for certain geographic reclassifications and special exception wage indices as required by section 124 of the MIPPA, Pub. L. 110–275 (discussed in section II.B. of this notice). It also incorporates the effects on the final GAFs of FY 2009 geographic reclassification decisions made by the MGCRB compared to FY 2008 decisions. However, it does not account for changes in payments due to changes in the DSH and IME adjustment factors.

d. Exceptions Payment Adjustment Factor

The adjustments made to the wage index as a result of the extension of the expiration date for certain geographic reclassifications and special exception wage indices as required by section 124 of the MIPPA, Pub. L. 110–275 had no effect on capital exceptions payments. Therefore, the special exceptions adjustment factor remains at 0.9999 as discussed in section III.A.4. of FY 2009 IPPS final rule (73 FR 48773).

e. Capital Standard Federal Rate for FY 2009

We are providing a chart that shows how each of the factors and adjustments for FY 2009 affect the computation of the final FY 2009 capital Federal rate in comparison to the FY 2008 capital Federal rate. The FY 2009 update factor has the effect of increasing the final capital Federal rate by 0.9 percent compared to the FY 2008 capital Federal rate. The final GAF/DRG budget neutrality factor has the effect of increasing the final capital Federal rate by 0.15 percent. The final FY 2009 outlier adjustment factor has the effect of decreasing the final capital Federal rate by 0.61 percent compared to the FY 2008 outlier adjustment factor. The FY 2009 exceptions payment adjustment factor has the effect of increasing the final capital Federal rate by 0.02 percent compared to the FY 2008 exceptions payment adjustment factor. As discussed in the FY 2009 IPPS final rule (73 FR 48773 through 48774), the adjustment for improvements in documentation and coding under the MS–DRGs, which was unaffected by the extension of the expiration date for certain geographic reclassifications and special exception wage indices as required by section 124 of the MIPPA, Pub. L. 110–275, has the effect of decreasing the FY 2009 capital Federal rate by 0.9 percent as compared to the FY 2008 capital Federal rate. The combined effect of all the changes is to decrease the capital Federal rate by 0.46 percent compared to the average FY 2008 capital Federal rate.

COMPARISON OF FACTORS AND ADJUSTMENTS—FY 2008 CAPITAL FEDERAL RATE AND FY 2009 CAPITAL FEDERAL RATE

	FY 2008	FY 2009	Change	Percent change [4]
Update Factor [1]	1.0090	1.0090	1.0090	0.90
GAF/DRG Adjustment Factor [1]	0.9996	1.0015	1.0015	0.15
Outlier Adjustment Factor [2]	0.9523	0.9465	0.9939	−0.61
Exceptions Adjustment Factor [2]	0.9997	0.9999	1.0002	0.02
MS–DRG Coding and Documentation Improvements Adjustment Factor [3]	0.9940	0.9910	0.9910	−0.90
Capital Federal Rate	$426.14	$424.17	0.9954	−0.46

[1] The update factor and the GAF/DRG budget neutrality factors are built permanently into the capital rates. Thus, for example, the incremental change from FY 2008 to FY 2009 resulting from the application of the 1.0015 GAF/DRG budget neutrality factor for FY 2009 is 1.0015.

[2] The outlier reduction factor and the exceptions adjustment factor are not built permanently into the capital rates; that is, these factors are not applied cumulatively in determining the capital rates. Thus, for example, the net change resulting from the application of the FY 2009 outlier adjustment factor is 0.9465/0.9523, or 0.9939.

[3] Adjustment to FY 2009 IPPS rates to account for documentation and coding improvements expected to result from the adoption of the MS–DRGs, as discussed above in section III.D. of the Addendum to the FY 2009 IPPS final rule.

[4] Percent change of individual factors may not sum due to rounding.

We provided a chart in the FY 2009 IPPS final rule that compared the tentative FY 2009 capital Federal rate to the proposed FY 2009 capital Federal rate (see 73 FR 48775). We are now providing a chart that shows how the final FY 2009 capital Federal rate differs from the proposed FY 2009 capital Federal rate presented in the FY 2009 IPPS proposed rule (73 FR 23721).

COMPARISON OF FACTORS AND ADJUSTMENTS—PROPOSED FY 2009 CAPITAL FEDERAL RATE AND FINAL FY 2009 CAPITAL FEDERAL RATE

	Proposed FY 2008	Final FY 2009	Change	Percent change
Update Factor	1.0070	1.0090	1.0020	0.20

COMPARISON OF FACTORS AND ADJUSTMENTS—PROPOSED FY 2009 CAPITAL FEDERAL RATE AND FINAL FY 2009 CAPITAL FEDERAL RATE—Continued

	Proposed FY 2008	Final FY 2009	Change	Percent change
GAF/DRG Adjustment Factor	1.0007	*1.0015	1.0008	0.08
Outlier Adjustment Factor	0.9427	0.9465	1.0040	0.40
Exceptions Adjustment Factor	0.9998	0.9999	1.0001	0.01
MS–DRG Coding and Documentation Improvements Adjustment Factor	0.9910	0.9910	0.0000	0.00
Capital Federal Rate	$421.29	*$424.17	1.0068	0.68

*Final factor/rate for FY 2009, as discussed in section IIC.2. of this notice, which were revised from the tentative factors published in the FY 2009 IPPS final rule.

As a final comparison, we are providing a chart that shows how the final FY 2009 capital Federal rate differs from the tentative FY 2009 capital Federal rate as presented in the FY 2009 IPPS final rule.

COMPARISON OF FACTORS AND ADJUSTMENTS—TENTATIVE FY 2009 CAPITAL FEDERAL RATE AND FINAL FY 2009 CAPITAL FEDERAL RATE

	FY 2009 [1]	FY 2009 [2]	Change	Percent change
Update Factor	1.0090	1.0090	0.0000	0.00
GAF/DRG Adjustment Factor	1.0010	1.0015	1.0005	0.05
Outlier Adjustment Factor	0.9465	0.9465	0.0000	0.00
Exceptions Adjustment Factor	0.9999	0.9999	0.0000	0.00
MS–DRG Coding and Documentation Improvements Adjustment Factor	0.9910	0.9910	0.0000	0.00
Capital Federal Rate	$423.96	$424.17	1.0005	0.05

[1] As published in the FY 2009 IPPS final rule without the implementation of the extension of the expiration date for certain geographic reclassifications and special exception wage indices as required by section 124 of the MIPPA, Pub. L. 110–275.
[2] Final capital factors and rates after implementation of the extension of the expiration date for certain geographic reclassifications and special exception wage indices as required by section 124 of the MIPPA, Pub. L. 110–275.

f. Special Capital Rate for Puerto Rico Hospitals

Using the methodology discussed in the FY 2009 IPPS final rule (73 FR 48775), the final FY 2009 special capital rate for Puerto Rico is $198.77. (See the FY 2009 IPPS final rule (73 FR 48775) for additional information on the calculation of FY 2009 capital PPS payments.)

III. 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. Chapter 35).

IV. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993, as further amended), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

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 1 year). We have determined that this rulemaking is ''economically significant'' as measured by the $100 million threshold, and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a Regulatory Impact Analysis, that to the best of our ability, presents the costs and benefits of the rulemaking.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small government jurisdictions. We estimate that most hospitals and most other providers and suppliers are small entities as that term is used in the RFA. The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of less than $31.5 million in any 1 year). (For details on the latest standard for health care providers, we refer readers to page 33 of the Table of Small Business Size Standards at the Small Business Administration's Web site at *http://www.sba.gov/services/contractingopportunities/sizestandardstopics/tableofsize/index.html.* For purposes of the RFA, all hospitals and other providers and suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity. We believe that this notice will have a significant impact on small entities. Because we acknowledge that many of the affected entities are small entities, the analysis discussed in this section constitutes our final regulatory flexibility analysis.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to

the provisions of section 604 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we now define a small rural hospital as a hospital that is located outside of an urban area and has fewer than 100 beds. Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent urban area. Thus, for purposes of the IPPS, we continue to classify these hospitals as urban hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $130 million. This notice will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a 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. This notice will not have a substantial effect on State and local governments.

The following analysis, in conjunction with the remainder of this document, demonstrates that this notice is consistent with the regulatory philosophy and principles identified in Executive Order 12866, the RFA, and section 1102(b) of the Act. The notice will affect payments to a substantial number of small rural hospitals, as well as other classes of hospitals, and the effects on some hospitals may be significant.

The impact analysis for the policy changes under the IPPS for operating costs was included in the FY 2009 IPPS final rule. As stated in the impact analysis of the FY 2009 IPPS final rule (73 FR 49064), we were unable to provide final wage indices because we were unable to account for the recently enacted legislation (that is, section 124 of Pub. L. 110–275), that extended certain special exceptions and reinstated the provisions of section 508 of Public Law 108–173 relating to the wage index reclassifications of hospitals for an additional year, through FY 2009. Therefore, at the time of the FY 2009 IPPS final rule, we were also unable to finalize budget neutrality calculations, the outlier threshold and outlier offsets to the standardized amounts because these figures were all dependent on the final wage indices. However, we indicated that we would recalculate the impacts and provide in a subsequent **Federal Register** notice prior to October 1, 2008. Now that we have recalculated the new wage indices to reflect the extension for reclassification for section 508 of MMA and special exception providers, we are providing final impacts for FY 2009. Because the extension of section 508 is a nonbudget neutral provision, overall estimates for hospitals have changed from our estimate that was published in the FY 2009 IPPS final rule (73 FR 49064). We estimate that the changes in the FY 2009 IPPS final rule, in conjunction with the final IPPS rates and wage index included in this notice, will result in an approximate $5.0 billion increase in operating payments.

B. Final FY 2009 Impacts on IPPS Operating Costs

1. Analysis of Table I

Table I displays the results of our analysis of the payment changes for FY 2009 after implementing section 124 of Public Law 110–275, which extended section 508 of MMA and special exception reclassifications through FY 2009. These impacts update the tentative ones that were published in the FY 2009 IPPS final rule. As explained in the FY 2009 final rule and in this notice, we were unable to implement the section 124 of Public Law 110–275 that extended reclassifications for section 508 of MMA and special exception providers, so we were unable to finalize the wage index, standardized amounts, outlier threshold and budget neutrality factors. In this notice, we can now finalize the wage index, standardized amounts, outlier thresholds and budget neutrality factors, and we are only displaying the impact columns that were affected by the Section 508 and special exception reclassifications. Therefore, we are not reprinting the impacts of the DRG relative weights, the wage data, the DRG and wage index changes that were published in the FY 2009 IPPS final rule because those columns are based on pre-reclassification wage data that is not affected by the Section 508 and special exception reclassifications. (See the FY 2009 IPPS final rule (73 FR 49065 through 49072) for a full discussion of the FY 2009 regulatory impact analysis.) In addition, we are adding a column to display the impact of the implementation of section 508 of MMA and special exceptions.

Table I displays the results of our analysis of the changes for FY 2009. The table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The top row of the table shows the overall impact on the 3,538 hospitals included in the analysis.

The next four rows of Table I contain hospitals categorized according to their geographic location: All urban, which is further divided into large urban and other urban; and rural. There are 2,553 hospitals located in urban areas included in our analysis. Among these, there are 1,408 hospitals located in large urban areas (populations over 1 million), and 1,145 hospitals in other urban areas (populations of 1 million or fewer). In addition, there are 985 hospitals in rural areas. The next two groupings are by bed-size categories, shown separately for urban and rural hospitals. The final groupings by geographic location are by census divisions, also shown separately for urban and rural hospitals.

The second part of Table I shows hospital groups based on hospitals' FY 2009 payment classifications, including any reclassifications under section 1886(d)(10) of the Act. For example, the rows labeled urban, large urban, other urban, and rural show that the numbers of hospitals paid based on these categorizations after consideration of geographic reclassifications (including reclassifications under section 1886(d)(8)(B) and section 1886(d)(8)(E) of the Act that have implications for capital payments) are 2,594, 1,430, 1,164 and 944, respectively.

The next three groupings examine the impacts of the changes on hospitals grouped by whether or not they have GME residency programs (teaching hospitals that receive an IME adjustment) or receive DSH payments, or some combination of these two adjustments. There are 2,495 nonteaching hospitals in our analysis, 808 teaching hospitals with fewer than 100 residents, and 235 teaching hospitals with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status, and whether they are considered urban or rural for DSH purposes. The next category groups together hospitals considered urban after geographic reclassification, in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither.

The next five rows examine the impacts of the changes on rural hospitals by special payment groups (SCHs, RRCs, and MDHs). There were

196 RRCs, 356 SCHs, 157 MDHs, 104 hospitals that are both SCHs and RRCs, and 12 hospitals that are both an MDH and an RRC.

The next series of groupings are based on the type of ownership and the hospital's Medicare utilization expressed as a percent of total patient days. These data were taken from the FY 2005 Medicare cost reports.

The next two groupings concern the geographic reclassification status of hospitals. The first grouping displays all urban hospitals that were reclassified by the MGCRB for FY 2009. The second grouping shows the MGCRB rural reclassifications. In addition, the last grouping reflects the 114 hospitals currently reclassified as Section 508 and special exception hospitals.

The final category shows the impact of the policy changes on the 20 cardiac specialty hospitals in our analysis.

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TABLE I.--IMPACT ANALYSIS OF CHANGES FOR FY 2009

	Number of Hospitals[1]	FY 2009 MGCRB Reclassifications[1] (1)	Transitional 1/5th Within State Rural Floor Budget Neutrality and 4/5th National Rural Floor Budget Neutrality[2] (2)	Application of Section 508 Reclassification (3)	FY 2009 Out-Migration Adjustment[3] (3)	All FY 2009 Changes w/CMI Adjustment and Assumed Growth[4] (4)
All Hospitals	3538	0	0	0.2	0	5
By Geographic Location:						
Urban hospitals	2553	-0.3	0	0.2	0	5.1
Large urban areas	1408	-0.4	0	0.2	0	5.2
Other urban areas	1145	-0.1	0.1	0.3	0	4.9
Rural hospitals	985	2.2	-0.2	0.1	0.1	4.1
Bed Size (Urban):						
0-99 beds	643	-0.4	0.1	0.2	0	4.2
100-199 beds	834	-0.2	0.1	0.3	0	5
200-299 beds	484	-0.1	0	0.1	0	5.1
300-499 beds	407	-0.3	0	0.2	0	5.2
500 or more beds	185	-0.4	-0.1	0.3	0	5.1
Bed Size (Rural):						
0-49 beds	339	0.7	-0.1	0.1	0.2	3.2
50-99 beds	374	1.2	-0.1	0.1	0.1	3.9
100-149 beds	164	2.7	-0.2	0	0.1	4.2
150-199 beds	64	2.6	-0.2	0.2	0	4.4
200 or more beds	44	3.6	-0.2	0.2	0	4.7
Urban by Region:						
New England	121	0.2	0.5	0.5	0.1	4.7
Middle Atlantic	349	-0	-0.1	0.7	0	4.1
South Atlantic	385	-0.3	-0.1	0	0	5
East North Central	396	-0.3	-0.2	0.5	0	5.1
East South Central	164	-0.2	-0.1	0.1	0	4.8
West North Central	158	-0.6	-0.1	0.1	0	5.2
West South Central	374	-0.6	-0.2	0	0	5.1
Mountain	158	-0.1	-0.1	0	0	5.5
Pacific	395	-0.3	0.6	0.1	0	6.6
Puerto Rico	53	-0.7	-0.1	0	0	3.9
Rural by Region:						
New England	23	2.5	-0.3	0	0	3.5
Middle Atlantic	70	2.1	-0.1	0.1	0	3.8
South Atlantic	172	2.3	-0.2	0	0.1	4.4
East North Central	121	1.6	-0.1	0	0.1	3.8
East South Central	176	2.8	-0.2	0.1	0.1	4.1
West North Central	114	1.7	-0.1	0.5	0.1	4.3
West South Central	200	2.8	-0.2	0	0.1	3.8
Mountain	75	0.6	-0.1	0.1	0.1	3.7
Pacific	34	2.4	-0.3	0.7	0	5.6
By Payment Classification:						
Urban hospitals	2594	-0.2	0	0.2	0	5.1
Large urban areas	1430	-0.4	0	0.2	0	5.2
Other urban areas	1164	-0	0	0.3	0	4.9
Rural areas	944	2.1	-0.1	0.1	0.1	4.1
Teaching Status:						

	Number of Hospitals[1]	FY 2009 MGCRB Reclassifications[1] (1)	Transitional 1/5th Within State Rural Floor Budget Neutrality and 4/5th National Rural Floor Budget Neutrality[2] (2)	Application of Section 508 Reclassification (3)	FY 2009 Out-Migration Adjustment[3] (3)	All FY 2009 Changes w/CMI Adjustment and Assumed Growth[4] (4)
Nonteaching	2495	0.3	0.1	0.2	0	4.8
Fewer than 100 residents	808	-0.1	-0.1	0.2	0	5.1
100 or more residents	235	-0.3	-0.1	0.4	0	5.2
Urban DSH:						
Non-DSH	816	-0.1	0	0.3	0.1	4.5
100 or more beds	1559	-0.3	0	0.2	0	5.2
Less than 100 beds	353	-0.1	0.1	0.1	0	4.3
Rural DSH:						
SCH	397	0.5	-0.1	0.1	0.1	4
RRC	207	3.5	-0.2	0.2	0	4.5
100 or more beds	37	1.1	-0.2	0.2	0.3	3.6
Less than 100 beds	169	1.4	-0.2	0.2	0.3	3.2
Urban Teaching and DSH:						
Both teaching and DSH	820	-0.3	-0.1	0.3	0	5.2
Teaching and no DSH	163	0	0	0.5	0.1	4.7
No teaching and DSH	1092	-0.1	0.2	0.2	0	5.2
No teaching and no DSH	519	-0.2	0	0.2	0	4.4
Special Hospital Types:						
RRC	196	3.3	-0.1	0.1	0	4.8
SCH	356	0.4	-0.1	0.1	0.1	3.7
MDH	157	0.6	-0.1	0	0.2	4.8
SCH and RRC	104	1.8	-0.1	0.3	0	4.9
MDH and RRC	12	0.8	-0.1	0	0	3.7
Type of Ownership:						
Voluntary	2035	0	0	0.3	0	5
Proprietary	856	0	-0.1	0.1	0	4.9
Government	586	0.1	0.1	0.1	0	5.2
Medicare Utilization as a Percent of Inpatient Days:						
0-25	257	-0.4	0	0	0	5.7
25-50	1344	-0.3	0	0.2	0	5.3
50-65	1432	0.5	0	0.3	0	4.7
Over 65	394	0.5	-0.1	0.2	0.1	3.7
FY 2009 Reclassifications by the Medicare Geographic Classification Review Board:						
All Reclassified Hospitals	646	2.7	-0.1	0	0	4.9
Non-Reclassified Hospitals	2892	-0.6	0	0.3	0	5
Urban Hospitals Reclassified	300	2.3	0	0	0	5.2
Urban Nonreclassified, FY 2009:	2231	-0.7	0	0.3	0	5.1
All Rural Hospitals Reclassified Full Year FY 2009:	346	3.6	-0.2	0	0	4.3
Rural Nonreclassified Hospitals Full Year FY 2009:	578	-0.2	-0.1	0.3	0.2	3.8
All Section 401 Reclassified Hospitals:	30	-0.5	-0	0	0	3.1
Other Reclassified Hospitals (Section 1886(d)(8)(B))	61	3.3	-0.2	0	0	3.5
Section 508/Special Exceptions	114	-0.6	-0.3	3.7	0	5.8
Specialty Hospitals						
Cardiac Specialty Hospitals	20	-0.6	0	0	0	2.2

[1] Shown here are the effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB). The effects demonstrate the FY 2009 payment impact of going from no reclassifications to the reclassifications scheduled to be in effect for FY 2008. Reclassification for prior years has no bearing on the payment impacts shown here. This column reflects the geographic budget neutrality factor of 0.992088.

[2] This column displays the effects of the rural floor and the imputed floor, including the transition to the rural floor budget neutrality adjustment at the State level. Under the transition, hospitals will receive a blended wage index that is 20 percent of a wage index with the State level rural and imputed floor budget neutrality adjustment and 80 percent of a wage index with the national budget neutrality adjustment.

[7] This column displays the impact of section 505 of Pub. L. 108-173, which provides for an increase in a hospital's wage index if the hospital qualifies by meeting a threshold percentage of residents of the county where the hospital is located who commute to work at hospitals in counties with higher wage indexes.

[4]This column shows changes in payments from FY 2008 to FY 2009, including the FY 2009 -0.9 percent documentation and coding adjustment and the projected 1.8 percent increase in case-mix expected to occur in FY 2009 due to improvements in documentation and coding. It also reflects the impact of the FY 2009 update, and changes in hospitals' reclassification status in FY 2009 compared to FY 2008. The sum of these impacts may be different from the percentage changes shown here due to rounding and interactive effects.

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a. Effects of MGCRB Reclassifications (Column 1)

The changes in Column 1 reflect the per case payment impact of moving from this baseline to a simulation incorporating the MGCRB decisions for FY 2009 which affect hospitals' wage index area assignments. For information on the payment impacts prior to geographic reclassification, please see the FY 2009 IPPS Final Rule (73 FR 49069 through 49070).

By Spring of each year, the MGCRB makes reclassification determinations that will be effective for the next fiscal year, which begins on October 1. The MGCRB may approve a hospital's reclassification request for the purpose of using another area's wage index value. Hospitals may appeal denials of MGCRB decisions to the CMS Administrator. Further, hospitals have 45 days from publication of the IPPS rule in the **Federal Register** to decide whether to withdraw or terminate an approved geographic reclassification for the following year. This column reflects all MGCRB decisions, Administrator appeals and decisions of hospitals for FY 2009 geographic reclassifications.

Because section 124 of Pub. L. 110–275 extended certain special exceptions and section 508 reclassifications through FY 2009, we analyzed the data of hospitals in labor market areas affected by legislation, including hospitals with Lugar redesignations, and make best efforts to give those hospitals a wage index value that we believe results in the highest FY 2009 wage index for which they are eligible. Hospitals will have 15 days from the date of **Federal Register** publication of this separate notice to notify us if they wish to revise the decision that we made on their behalf.

The impacts shown in Column 1 of Table 1 reflect our reclassification decisions on behalf of hospitals, which reflect the area that would give the hospital the highest wage index. The overall effect of geographic reclassification is required by section 1886(d)(8)(D) of the Act to be budget neutral. The geographic budget neutrality factor reflects the effect of the geographic reclassifications based on our reclassification decisions. Therefore, for the purposes of this impact analysis, we are applying an adjustment of 0.992088 to ensure that the effects of the section 1886(d)(10) reclassifications are budget neutral. Geographic reclassification generally benefits hospitals in rural areas. We estimate that geographic reclassification will increase payments to rural hospitals by an average of 2.2 percent.

b. Effects of the Rural Floor and Imputed Floor, Including the Transition To Apply Budget Neutrality at the State Level (Column 2)

As discussed in the FY 2009 IPPS final rule (73 FR 49070), we are applying the rural floor and imputed floor budget neutrality at the State level through a 3-year transition. In FY 2009, hospitals will receive a blended wage index that is 20 percent of a wage index with the State level rural and imputed floor budget neutrality adjustment and 80 percent of a wage index with the national budget neutrality adjustment. At the time of publication of the FY 2009 IPPS final rule, we could only apply tentative rural floor budget neutrality factors because we were unable to finalize the wage index to account for the section 124 of Pub. L. 110–275 that extended that the reclassification for section 508 and special exception hospitals. The finalized national rural floor budget neutrality applied to the wage index is 0.996272. The within-State rural floor budget neutrality factors applied to the wage index is available in Table 4D of the Addendum to this notice. After the wage index is blended, an additional adjustment of 0.999785 is applied to the wage index to ensure that payments before the application of the rural floor are equivalent to the payments under the blended budget neutral rural floor wage index.

The column compares the post-reclassification FY 2009 wage index of providers before the rural floor adjustment and the post-reclassification FY 2009 wage index of providers with the rural floor and imputed floor adjustment with the transitional rural floor budget neutrality factor applied. We project that, in aggregate, rural hospitals will experience a 0.2 percent decrease in payments as a result of the application of the rural floor including the transition to within-State rural floor budget neutrality. We project hospitals located in other urban areas (populations of 1 million or fewer) will experience a 0.1 percent increase in payments because only providers can benefit from the rural floor. Rural New England hospitals can expect the greatest decrease in payment, 0.3 percent, because under the blended rural floor budget neutrality adjustment, hospitals in New Hampshire will receive a rural floor budget neutrality adjustment of 0.99236 or a reduction of 0.8 percent, and hospitals in Connecticut will receive a rural floor budget neutrality adjustment of 0.99000 or a reduction of 1 percent. New Jersey, which is the only State that benefits from the imputed floor, is expected to receive a rural floor budget neutrality adjustment of 0.99455, or a reduction of less than 1 percent.

c. Effects of the Application of Section 508 Reclassification (Column 3)

This column displays the impact of extending the reclassification for Section 508 and special exception providers through FY 2009. Because this provision is not budget neutral, hospitals, overall, will experience a 0.2 percent increase in payments. All the hospital categories, depending on whether Section 508 and special exception providers are represented in those categories, will either experience an increase or no change in payments. Providers in urban New England and

East North Central can expect increases in payments by 0.5 percent because those regions have Section 508 and special exception providers. Providers in the urban Middle Atlantic region will experience a 0.7 percent increase in estimated payments because there are several section 508 and special exception providers located in New Jersey.

d. Effects of the Wage Index Adjustment for Out-Migration (Column 4)

Section 1886(d)(13) of the Act, as added by section 505 of Pub. L. 108–173, provides for an increase in the wage index for hospitals located in certain counties that have a relatively high percentage of hospital employees who reside in the county, but work in a different area with a higher wage index. Hospitals located in counties that qualify for the payment adjustment are to receive an increase in the wage index that is equal to a weighted average of the difference between the wage index of the resident county, post-reclassification and the higher wage index work area(s), weighted by the overall percentage of workers who are employed in an area with a higher wage index. Section 508 providers and special exception providers that may have qualified for the out-migration adjustment in the FY 2009 IPPS final rule will now receive their section 508 or special exception reclassification wage index. With the out-migration adjustment, rural providers will experience a 0.1 percent increase in payments in FY 2009 relative to no adjustment at all. We included these additional payments to providers in the impact table shown above, and we estimate the impact of these providers receiving the out-migration increase to be approximately $31 million.

e. Effects of All Changes With CMI Adjustment and Estimated Growth (Column 5)

Column 5 compares our estimate of payments per case between FY 2008 and FY 2009, incorporating all changes reflected in this notice for FY 2009 (including statutory changes). This column includes the FY 2009 documentation and coding adjustment of −0.9 percent and the projected 1.8 percent increase in case-mix from improved documentation and coding (with the 1.8 percent case-mix increase assumed to occur equally across all hospitals).

Column 5 reflects the impact of all FY 2009 changes relative to FY 2008. The average increase for all hospitals is approximately 5.0 percent. This increase includes the effects of the 3.6 percent market basket update. It also reflects the 0.4 percentage point difference between the projected outlier payments in FY 2008 (5.1 percent of total DRG payments) and the current estimate of the percentage of actual outlier payments in FY 2008 (4.7 percent), as described in the FY 2009 IPPS final rule (73 FR 48766). As a result, payments are projected to be 0.4 percentage points lower in FY 2008 than originally estimated, resulting in a 0.4 percentage point greater increase for FY 2009 than would otherwise occur. This analysis accounts for the impact of section 124 of Pub. L. 110–275, which extended certain special exceptions and section 508 reclassifications for FY 2009. This nonbudget neutral provision, that increases the wage index for 114 providers, results in an estimated increase in payments by 0.2 percent. There might also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in Column 5 may not equal the product of the percentage changes described above.

The overall change in payments per case for hospitals in FY 2009 is estimated to increase by 5.0 percent. Hospitals in urban areas will experience an estimated 5.1 percent increase in payments per case compared to FY 2008. Hospitals in large urban areas will experience an estimated 5.2 percent increase and hospitals in other urban areas will experience an estimated 4.9 percent increase in payments per case in FY 2008. Hospital payments per case in rural areas are estimated to increase 4.1 percent. The increases that are larger than the national average for larger urban areas and smaller than the national average for other urban and rural areas are largely attributed to the differential impact of adopting MS–DRGs.

Among urban census divisions, the largest estimated payment increases will be 6.5 percent in the Pacific region (generally attributed to MS–DRGs, wage data and section 508 and special exception reclassifications) and 5.5 percent in the Mountain region (mostly due to MS–DRGs). The smallest urban increase is estimated at 3.9 percent in the Puerto Rico region.

Among the rural regions in Column 5, the providers in the New England region experience the smallest increase in payments (3.5 percent) primarily due to the transition to the within-State rural floor budget neutrality adjustment. The Pacific and South Atlantic regions will have the highest increases among rural regions, with 5.6 percent and 4.4 percent estimated increases, respectively. Again, increases in rural areas are generally less than the national average due to the adoption of MS–DRGs.

Among special categories of rural hospitals in Column 9, the MDHs and the RRCs will receive an estimated increase in payments of 4.8 percent, and the SCHs will experience an estimated increase in payments by 3.7 percent.

Urban hospitals reclassified for FY 2009 are anticipated to receive an increase of 5.2 percent, while urban hospitals that are not reclassified for FY 2009 are expected to receive an increase of 5.1 percent. Rural hospitals reclassifying for FY 2009 are anticipated to receive a 4.3 percent payment increase and rural hospitals that are not reclassifying are estimated to receive a payment increase of 3.8 percent. Section 508 and special exception providers are estimated to receive a payment increase of 5.8 percent relative to last year.

2. Analysis of Table II

Table II presents the projected impact of the changes for FY 2009 for urban and rural hospitals and for the different categories shown in Table I. It compares the estimated payments per case for FY 2008 with the average estimated payments per case for FY 2009, as calculated under our models. Thus, the table presents, in terms of average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. The percentage changes shown in the last column of Table II equal the percentage changes in average payments from Column 5 of Table I.

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Table II- Impact Analysis of Changes for FY 2009 Operating Prospective Payment System (Payments per Case)

	Number of Hospitals	Average FY 2008 Payment Per Case[1] (2)	Current Average FY 2009 Payment Per Case[1] (3)	Current Published All FY 2009 Changes (4)
All hospitals	3538	$9,150	$9,605	5
By Geographic Location:				
Urban hospitals	2553	$9,574	$10,060	5.1
Large urban areas (populations over 1 million)	1408	$10,046	$10,573	5.2
Other urban areas (populations of 1 million or fewer)	1145	$9,005	$9,442	4.9
Rural hospitals	985	$6,700	$6,974	4.1
Bed Size (Urban):				
0-99 beds	643	$7,272	$7,574	4.2
100-199 beds	834	$8,141	$8,549	5
200-299 beds	484	$8,965	$9,423	5.1
300-499 beds	407	$10,002	$10,520	5.2
500 or more beds	185	$11,808	$12,415	5.1
Bed Size (Rural):				
0-49 beds	339	$5,465	$5,642	3.2
50-99 beds	374	$6,151	$6,388	3.9
100-149 beds	164	$6,672	$6,949	4.2
150-199 beds	64	$7,393	$7,717	4.4
200 or more beds	44	$8,386	$8,780	4.7
Urban by Region:				
New England	121	$9,927	$10,392	4.7
Middle Atlantic	349	$10,432	$10,860	4.1
South Atlantic	385	$9,033	$9,489	5
East North Central	396	$9,080	$9,539	5.1
East South Central	164	$8,654	$9,070	4.8
West North Central	158	$9,144	$9,619	5.2
West South Central	374	$9,044	$9,509	5.1
Mountain	158	$9,586	$10,113	5.5
Pacific	395	$11,591	$12,351	6.6
Puerto Rico	53	$4,713	$4,896	3.9
Rural by Region:				
New England	23	$9,083	$9,401	3.5
Middle Atlantic	70	$6,922	$7,186	3.8
South Atlantic	172	$6,523	$6,810	4.4
East North Central	121	$6,878	$7,142	3.8
East South Central	176	$6,259	$6,518	4.1
West North Central	114	$6,996	$7,298	4.3
West South Central	200	$6,092	$6,323	3.8
Mountain	75	$6,867	$7,122	3.7
Pacific	34	$8,179	$8,634	5.6
By Payment Classification:				
Urban hospitals	2594	$9,553	$10,038	5.1
Large urban areas (populations over 1 million)	1430	$10,027	$10,552	5.2
Other urban areas (populations of 1 million or fewer)	1164	$8,980	$9,417	4.9
Rural areas	944	$6,732	$7,008	4.1
Teaching Status:				
Non-teaching	2495	$7,725	$8,095	4.8

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	Number of Hospitals	Average FY 2008 Payment Per Case[1] (2)	Current Average FY 2009 Payment Per Case[1] (3)	Current Published All FY 2009 Changes (4)
Fewer than 100 Residents	808	$9,219	$9,686	5.1
100 or more Residents	235	$13,452	$14,147	5.2
Urban DSH:				
Non-DSH	816	$8,134	$8,498	4.5
100 or more beds	1559	$10,041	$10,566	5.2
Less than 100 beds	353	$6,763	$7,054	4.3
Rural DSH:				
SCH	397	$6,132	$6,380	4
RRC	207	$7,483	$7,818	4.5
100 or more beds	37	$6,057	$6,275	3.6
Less than 100 beds	169	$5,457	$5,632	3.2
Urban teaching and DSH:				
Both teaching and DSH	820	$10,973	$11,543	5.2
Teaching and no DSH	163	$8,930	$9,349	4.7
No teaching and DSH	1092	$8,285	$8,716	5.2
No teaching and no DSH	519	$7,795	$8,140	4.4
Rural Hospital Types:				
RRC	196	$7,709	$8,077	4.8
SCH	356	$6,585	$6,828	3.7
MDH	157	$5,803	$6,080	4.8
SCH and RRC	104	$8,088	$8,484	4.9
MDH and RRC	12	$7,273	$7,543	3.7
Type of Ownership:				
Voluntary	2035	$9,255	$9,714	5
Proprietary	856	$8,451	$8,862	4.9
Government	586	$9,432	$9,921	5.2
Medicare Utilization as a Percent of Inpatient Days:				
0-25	257	$13,016	$13,761	5.7
25-50	1344	$10,349	$10,894	5.3
50-65	1432	$7,964	$8,335	4.7
Over 65	394	$7,041	$7,304	3.7
Hospitals Reclassified by the Medicare Geographic Classification Review Board: FY 2009 Reclassifications:				
All Reclassified Hospitals FY 2009	646	$8,467	$8,881	4.9
All Non-Reclassified Hospitals FY 2009	2892	$9,321	$9,786	5
Urban Reclassified Hospitals FY 2009:	300	$9,291	$9,771	5.2
Urban Non-reclassified Hospitals FY 2009:	2231	$9,628	$10,116	5.1
Rural Reclassified Hospitals FY 2009:	346	$7,241	$7,556	4.3
Rural Nonreclassified Hospitals FY 2009:	578	$5,986	$6,213	3.8
All Section 401 Reclassified Hospitals:	30	$7,517	$7,747	3.1
Other Reclassified Hospitals (Section 1886(d)(8)(B))	61	$6,542	$6,773	3.5
Section 508 and Special Exception Hospitals	114	$9,582	$10,134	5.8
Specialty Hospitals				
Cardiac Specialty Hospitals	20	$10,846	$11,082	2.2

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C. Final FY 2009 Capital-Related Impacts (Including the Quantitative Effects of the Extension of the Expiration Date for Certain Geographic Reclassifications and Special Exception Wage Indices as Required by Section 124 of the MIPPA, Pub. L. 110–275)

1. General Considerations

In accordance with § 412.312, the basic methodology for determining capital IPPS payments in FY 2009 is as follows: (Standard Federal Rate) x (DRG weight) x (GAF) x (COLA for hospitals located in Alaska and Hawaii) x (1 + DSH Adjustment Factor + IME Adjustment Factor, if applicable). In addition, hospitals may also receive outlier payments for those cases that qualify under the threshold established for each fiscal year.

The data used in developing the impact analysis presented below are taken from the March 2008 update of the FY 2007 MedPAR file and the March 2008 update of the Provider-Specific File that is used for payment purposes. Although the analyses of the changes to the capital prospective payment system do not incorporate cost data, we used the March 2008 update of the most recently available hospital cost report data (FYs 2005 and 2006) to categorize hospitals. Our analysis has several qualifications. We use the best data available and make assumptions about case-mix and beneficiary enrollment as described below. In addition, as discussed in section III.A.5. of the Addendum to the FY 2009 IPPS final rule (73 FR 48773 through 48774), we adjusted the national capital rate to account for improvements in documentation and coding under the MS–DRGs in FY 2009. (As discussed in section III.A.6. of the Addendum to that same final rule, we did not adjust the Puerto Rico specific capital rate to account for improvements in documentation and coding under the MS–DRGs in FY 2009.) Furthermore,

due to the interdependent nature of the IPPS, it is very difficult to precisely quantify the impact associated with each change. In addition, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases (for instance, the number of beds), there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available sources overall. However, for individual hospitals, some miscategorizations are possible.

Using cases from the March 2008 update of the FY 2007 MedPAR file, we simulated payments under the capital PPS for FY 2008 and FY 2009 for a comparison of total payments per case. Any short-term, acute care hospitals not paid under the general IPPS (Indian Health Service hospitals and hospitals in Maryland) are excluded from the simulations.

We modeled payments for each hospital by multiplying the capital Federal rate by the GAF and the hospital's case-mix. We then added estimated payments for indirect medical education (which are reduced by 50 percent in FY 2009 in accordance with § 412.322(c)), disproportionate share, and outliers, if applicable. For purposes of this impact analysis, the model included the same assumptions as the capital IPPS impact analysis presented in the FY 2009 IPPS final rule (73 FR 49079). The model included the following assumptions:

- We estimate that the Medicare case-mix index will increase by 1.0 percent in both FYs 2008 and 2009. (We note that this does not reflect the expected growth in case-mix due to improvement in documentation and coding under the MS–DRGs, as discussed below.)
- We estimate that the Medicare discharges will be approximately 13 million in both FY 2008 and FY 2009.
- The capital Federal rate was updated beginning in FY 1996 by an analytical framework that considers changes in the prices associated with capital-related costs and adjustments to account for forecast error, changes in the case-mix index, allowable changes in intensity, and other factors. The FY 2009 update is 0.9 percent (see section II.C.2.e of this notice).
- In addition to the FY 2009 update factor, the FY 2009 capital Federal rate was calculated based on a GAF/DRG budget neutrality factor of 1.0015, an outlier adjustment factor of 0.9465, and an exceptions adjustment factor of 0.9999.
- The FY 2009 national capital rate was further adjusted by a factor to account for anticipated improvements in documentation and coding that are expected to increase case-mix under the MS–DRGs. In the FY 2008 IPPS final rule with comment period (72 FR 47186), we established adjustments to the IPPS rates based on the Office of the Actuary projected case-mix growth resulting from improved documentation and coding of 1.2 percent for FY 2008, 1.8 percent for FY 2009, and 1.8 percent for FY 2010. However, we reduced the documentation and coding adjustment to −0.6 percent for FY 2008, and for FY 2009, we are applying an adjustment of negative 0.9 percent, consistent with section 7 of Public Law 110–90. (As noted above, we are not adjusting the Puerto Rico-specific capital rate to account for improvements in documentation and coding under the MS–DRGs in FY 2009.)

2. Results

We used the actuarial model described above to estimate the potential impact of our changes for FY 2009 on total capital payments per case, using a universe of 3,538 hospitals. As described above, the individual hospital payment parameters are taken from the best available data, including the March 2008 update of the FY 2007 MedPAR file, the March 2008 update to the PSF, and the most recent cost report data from the March 2008 update of HCRIS. In Table III, we present a comparison of estimated total payments per case for FY 2008 compared to FY 2009 based on the FY 2009 payment policies. Column 2 shows estimates of payments per case under our model for FY 2008. Column 3 shows estimates of payments per case under our model for FY 2009. Column 4 shows the total percentage change in payments from FY 2008 to FY 2009. The change represented in Column 4 includes the 0.9 percent update to the capital Federal rate, other changes in the adjustments to the capital Federal rate (for example, the 50 percent reduction to the teaching adjustment for FY 2009), and the additional 0.9 percent reduction to the national capital rate to account for improvements in documentation and coding (or other changes in coding that do not reflect real changes in case-mix) for implementation of the MS–DRGs). Consistent with the impact analysis for the policy changes under the IPPS for operating costs in section IV.B. of this notice, for purposes of this impact analysis, we also assume a 1.8 percent increase in case-mix growth for FY 2009, as determined by the Office of the Actuary, because we believe the adoption of the MS–DRGs will result in case-mix growth due to documentation and coding changes that do not reflect real changes in patient severity of illness. The comparisons are provided by: (1) Geographic location; (2) region; and (3) payment classification.

The simulation results show that, on average, capital payments per case in FY 2009 are expected to increase as compared to capital payments per case in FY 2008. The capital rate for FY 2009 will decrease 0.46 percent as compared to the FY 2008 capital rate, and the changes to the GAFs are expected to result in a slight decrease (0.1 percent) in capital payments. In addition, the 50 percent reduction to the teaching adjustment in FY 2009 will also result in a decrease in capital payments from FY 2008 as compared to FY 2009. Countering these factors is the projected case-mix growth as a result of improved documentation and coding (discussed above) as well as an estimated increase in outlier payments in FY 2008 as compared to FY 2009. The net result of these changes is an estimated 0.7 percent change in capital payments per discharge from FY 2008 to FY 2009 for all hospitals (as shown below in Table III).

The results of our comparisons by geographic location and by region are consistent with the results we expected with the decrease to the teaching adjustment in FY 2009 (§ 412.522(c)). The geographic comparison shows that, on average, all urban hospitals are expected to experience a 0.6 percent increase in capital IPPS payments per case in FY 2009 as compared to FY 2008, while hospitals in large urban areas are expected to experience a 0.3 percent increase in capital IPPS payments per case in FY 2009 as compared to FY 2008. Capital IPPS payments per case for rural hospitals are expected to increase 1.4 percent. These differences in payments per case by geographic location are mostly due to the decrease in the teaching adjustment as discussed in the FY 2009 IPPS final rule (73 FR 49079). The capital impact is largely consistent with the impacts in the FY 2009 IPPS final rule (73 FR 49080 through 49081). However the capital GAF is somewhat affected by the wage index changes resulting from the extension of the expiration date for certain geographic reclassifications and special exception wage indices as required by section 124 of the MIPPA, Pub. L. 110–275. Any changes from the impact presented in the FY 2009 IPPS final rule are mostly due to the revised GAFs, which are based on the revised wage indices.

Most regions are estimated to experience an increase in total capital payments per case from FY 2008 to FY 2009. These increases vary by region and range from a 3.5 percent increase in

the Pacific urban region to a 0.6 percent increase in the West North Central urban region. Two urban regions are projected to experience a relatively larger decrease in capital payments, with the difference mostly due to changes in the GAFs and the 50 percent reduction in the teaching adjustment for FY 2009: −1.8 percent in the Middle Atlantic urban region and −2.2 percent in the New England urban region. The East North Central urban region is also expected to experience a decrease of 0.2 percent in capital payments in FY 2009 as compared to FY 2008, mostly due to changes in the GAFs. There are also two rural regions that are also expected to experience a decrease in total capital payments per case: A 2.8 percent decrease in the New England rural region and a 0.4 percent decrease in the Middle Atlantic rural region. Again, for these two rural regions, the projected decrease in capital payments is mostly due to changes in the GAF, as well as a smaller than average expected increase in payments due to the adoption of the MS–DRGs.

By type of ownership, voluntary and proprietary hospitals are estimated to experience an increase of 0.5 percent and 2.2 percent, respectively. The projected increase in capital payments per case for proprietary hospitals is mostly because these hospitals are expected to experience a smaller than average decrease in their payments due to the 50 percent teaching adjustment reduction for FY 2009. Government hospitals are estimated to experience a decrease in capital payments per case of 0.2 percent. This estimated decrease in capital payments is mostly due to a larger than average decrease in payments resulting from the 50 percent teaching adjustment reduction for FY 2009.

Section 1886(d)(10) of the Act established the MGCRB. Before FY 2005, hospitals could apply to the MGCRB for reclassification for purposes of the standardized amount, wage index, or both. Section 401(c) of Public Law 108–173 equalized the standardized amounts under the operating IPPS. Therefore, beginning in FY 2005, there is no longer reclassification for the purposes of the standardized amounts; however, hospitals still may apply for reclassification for purposes of the wage index for FY 2009. Reclassification for wage index purposes also affects the GAFs because that factor is constructed from the hospital wage index.

To present the effects of the hospitals being reclassified for FY 2009, we show the average capital payments per case for reclassified hospitals for FY 2008. All classifications of reclassified hospitals are expected to experience an increase in payments in FY 2009 as compared to FY 2008. Urban nonreclassified hospitals are expected to have the smallest increase in capital payments of 0.5 percent, while rural reclassified hospitals are expected to have the largest increase in capital payments of 1.7 percent. Other reclassified hospitals (that is, hospitals reclassified under section 1886(d)(8)(B) of the Act) are expected to experience a 1.4 percent increase in capital payment from FY 2008 to FY 2009. The large than average increase in projected changes in capital payments for rural reclassified and other reclassified hospitals is mainly due to a smaller than average change in payments from FY 2009 as compared to FY 2008 resulting from the 50 percent reduction in the teaching adjustment in FY 2009.

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TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE

[Estimated FY 2008 Payments Compared To FY 2009 Payments]

	Number of Hospitals (1)	Average FY 2008 Payments/ Case (2)	Average FY 2009 Payments/ Case (3)	Percent Change from FY 2008 to FY 2009 (4)
By Geographic Location:				
All hospitals	3,538	755	761	0.7
Large urban areas (populations over 1 million)	1,408	832	834	0.3
Other urban areas (populations of 1 million of fewer)	1,145	750	758	1.0
Rural areas	985	527	534	1.4
Urban hospitals	2,553	795	800	0.6
0-99 beds	643	628	642	2.2
100-199 beds	834	686	699	1.9
200-299 beds	484	749	761	1.6
300-499 beds	407	824	827	0.4
500 or more beds	185	965	954	-1.2
Rural hospitals	985	527	534	1.4
0-49 beds	339	425	427	0.4
50-99 beds	374	486	492	1.3
100-149 beds	164	530	539	1.8
150-199 beds	64	581	592	1.8
200 or more beds	44	649	657	1.1
By Region:				
Urban by Region	2,553	795	800	0.6
New England	121	833	815	-2.2
Middle Atlantic	349	856	841	-1.8
South Atlantic	385	754	765	1.5
East North Central	396	777	775	-0.2
East South Central	164	714	725	1.6
West North Central	158	775	780	0.6
West South Central	374	744	759	2.1
Mountain	158	807	824	2.1
Pacific	395	922	949	2.9
Puerto Rico	53	366	369	0.7
Rural by Region	985	527	534	1.4
New England	23	707	687	-2.8
Middle Atlantic	70	542	540	-0.4
South Atlantic	172	515	525	2.0
East North Central	121	554	560	1.1
East South Central	176	480	487	1.5
West North Central	114	555	567	2.2
West South Central	200	478	485	1.4
Mountain	75	533	543	1.8
Pacific	34	651	674	3.5
By Payment Classification:				
All hospitals	3,538	755	761	0.7
Large urban areas (populations over 1 million)	1,430	831	833	0.3
Other urban areas (populations of 1 million of fewer)	1,164	749	756	1.1
Rural areas	944	527	534	1.3

	Number of Hospitals (1)	Average FY 2008 Payments/ Case (2)	Average FY 2009 Payments/ Case (3)	Percent Change from FY 2008 to FY 2009 (4)
Teaching Status:				
Non-teaching	2,495	643	661	2.7
Fewer than 100 Residents	808	766	775	1.2
100 or more Residents	235	1,084	1,043	-3.8
Urban DSH:				
100 or more beds	1,559	819	822	0.4
Less than 100 beds	353	557	568	2.0
Rural DSH:				
Sole Community (SCH/EACH)	397	469	475	1.2
Referral Center (RRC/EACH)	207	583	592	1.5
Other Rural:				
100 or more beds	37	484	489	1.1
Less than 100 beds	169	438	442	0.9
Urban teaching and DSH:				
Both teaching and DSH	820	892	883	-1.0
Teaching and no DSH	163	789	790	0.1
No teaching and DSH	1,092	682	704	3.1
No teaching and no DSH	519	703	721	2.5
Rural Hospital Types:				
Non special status hospitals	2,466	799	803	0.5
RRC/EACH	65	697	715	2.7
SCH/EACH	38	641	650	1.5
Medicare-dependent hospitals (MDH)	10	469	471	0.4
SCH, RRC and EACH	15	753	775	2.9
Hospitals Reclassified by the Medicare Geographic Classification Review Board:				
FY2009 Reclassifications:				
All Urban Reclassified	300	779	787	1.0
All Urban Non-Reclassified	2,231	798	803	0.5
All Rural Reclassified	346	570	580	1.7
All Rural Non-Reclassified	578	468	471	0.8
Other Reclassified Hospitals (Section 1886(d)(8)(B))	53	536	544	1.4
Type of Ownership:				
Voluntary	2,035	769	773	0.5
Proprietary	856	700	715	2.2
Government	586	749	748	-0.2
Medicare Utilization as a Percent of Inpatient Days:				
0-25	257	988	967	-2.2
25-50	1,344	845	846	0.1
50-65	1,432	671	682	1.7
Over 65	394	597	604	1.1

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D. Overall Conclusion

The changes we are making in this notice will affect all classes of hospitals. Some hospitals are expected to experience significant gains and others less significant gains, but overall hospitals are projected to experience positive updates in IPPS payments in FY 2009. Table I of this section demonstrates the statutorily mandated extension of reclassification to section 508 and special exception providers through FY 2009, and all other policies reflected in the FY 2009 IPPS final rule. Table I also shows an overall increase of 5.0 percent in operating payments or an estimated increase of $4.97 billion. This estimate includes the projected savings associated with the hospital acquired conditions (HACs) policy ($21 million), the hospital reporting of quality data program costs ($2.39 million), the estimated new technology payments ($9.54 million), and all operating payment policies as described in section II of this notice. Capital payments are estimated to increase by 0.7 percent per case, as shown in Table III of this notice. Therefore, we project that the increase in capital payments in FY 2009 compared to FY 2008 will be approximately $60 million. The operating and capital payments should result in a net increase of $5.03 billion to IPPS providers. The discussions presented in the previous pages, in combination with the rest of this notice, constitute a regulatory impact analysis.

E. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table IV below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this notice. This table provides our best estimate of the increase in Medicare payments to providers as a result of the changes to the IPPS presented in this notice. All expenditures are classified as transfers to Medicare providers.

TABLE IV—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES FROM FY 2008 TO FY 2009

Category	Transfers
Annualized Monetized Transfers.	$5.030 Billion.
From Whom to Whom.	Federal Government to IPPS Medicare Providers.
Total	$5.030 Billion.

F. Executive Order 12866

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget reviewed this notice.

Authority: (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: September 11, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: September 19, 2008.

Michael O. Leavitt,

Secretary.

Addendum

This addendum includes tables referred to throughout the notice which contain data relating to the final FY 2009 wage indices and the hospital reclassifications and payment amounts for operating and capital-related costs discussed in section II. of this notice.

Table 1A—National Adjusted Operating Standardized Amounts, Labor/Nonlabor (69.7 Percent Labor Share/30.3 Percent Nonlabor Share If Wage Index Is Greater Than 1).

Table 1B—National Adjusted Operating Standardized Amounts, Labor/Nonlabor (62 Percent Labor Share/38 Percent Nonlabor Share If Wage Index Is Less Than or Equal To 1).

Table 1C—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor.

Table 1D—Capital Standard Federal Payment Rate.

Table 2—Hospital Case-Mix Indexes for Discharges Occurring in Federal Fiscal Year 2007; Hospital Wage Indexes for Federal Fiscal Year 2009; Hospital Average Hourly Wage for Federal Fiscal Years 2007 (2003 Wage Data), 2008 (2004 Wage Data), and 2009 (2005 Wage Data); Wage Indexes and 3-Year Average of Hospital Average Hourly Wages.

Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas by CBSA—FY 2009.

Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas by CBSA—FY 2009.

Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals That Are Reclassified by CBSA—FY 2009.

Table 4D–1—State Specific Rural Floor Budget Neutrality Factors—FY 2009.

Table 4D–2—Urban Areas with Hospitals Receiving the Statewide Rural Floor or Imputed Wage Index—FY 2009.

Table 4E—Urban CBSAs and Constituent Counties—FY 2009.

Table 4F—Puerto Rico Wage Index and Capital Geographic Adjustment Factor (GAF) by CBSA—FY 2009.

Table 4J—Out-Migration Adjustment—FY 2009.

Table 9A—Hospital Reclassifications and Redesignations by Individual Hospitals and CBSA for FY 2009.

Table 9B—Hospital Reclassifications and Redesignations by Individual Hospital Under Section 508 of Pub. L. 108–173 for FY 2009.

Table 9C—Hospitals Redesignated as Rural under Section 1886(d)(8)(E) of the Act for FY 2009.

Table 10—Geometric Mean Plus the Lesser of 0.75 of the National Adjusted Operating Standardized Payment Amount (Increased to Reflect the Difference Between Costs and Charges) or 0.75 of One Standard Deviation of Mean Charges by Diagnosis-Related Group (DRG)—September 2008.

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TABLE 1A.--NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS; LABOR/NONLABOR (69.7 PERCENT LABOR SHARE/30.3 PERCENT NONLABOR SHARE IF WAGE INDEX GREATER THAN 1)

Full Update (3.6 Percent)		Reduced Update (1.6 Percent)	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
$3574.50	$1,553.91	$3,505.49	$1,523.91

TABLE 1B.--NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR (62 PERCENT LABOR SHARE/38 PERCENT NONLABOR SHARE IF WAGE INDEX LESS THAN OR EQUAL TO 1)

Full Update (3.6 Percent)		Reduced Update (1.6 Percent)	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
$3,179.61	$1,948.80	$3,118.23	$1,911.17

TABLE 1C.--ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Rates if Wage Index Greater Than 1		Rates if Wage Index Less Than or Equal to 1	
	Labor	Nonlabor	Labor	Nonlabor
National	$3574.50	$1,553.91	$3,179.61	$1,948.80
Puerto Rico	$1,507.82	$924.15	$1,427.57	$1,004.40

TABLE 1D.--CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	$424.17
Puerto Rico	$198.77

TABLE 2--HOSPITAL CASE-MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 2007; HOSPITAL WAGE INDEXES FOR FEDERAL FISCAL YEAR 2009; HOSPITAL AVERAGE HOURLY WAGES FOR FEDERAL FISCAL YEARS 2007 (2003 WAGE DATA), 2008 (2004 WAGE DATA, AND 2009 (2005 WAGE DATA); AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
010001	1.5540	0.8401	22.1989	23.2195	25.0592	23.4783
010005	1.1196	0.8632	23.6022	23.0203	25.7771	24.1412
010006	1.4817	0.7878	23.4975	23.7502	25.1401	24.1338
010007	1.0616	0.7618	19.9329	21.3492	22.0185	21.1334
010008	1.0233	0.7792	17.9533	22.0793	23.2572	20.8434
010009	0.9973	0.8679	23.5626	25.9011	25.8420	25.1053
010010	1.0950	0.8632	27.0385	22.8602	24.8390	24.7463
010011	1.6750	0.8754	27.6658	27.4668	27.1997	27.4387
010012	1.1633	0.9489	24.4059	25.5767	26.4989	25.4689
010015	1.0456	0.7664	22.3383	27.0806	23.6821	24.1699
010016	1.5773	0.8754	24.6488	26.8611	28.9724	26.8031
010018	1.4886	0.8754	23.7048	24.8974	26.9514	25.1715
010019	1.2547	0.7878	22.8766	23.3460	25.0170	23.7424
010021	1.2255	0.7670	19.7367	21.0624	21.7601	20.8461
010022	0.9944	0.9739	25.8404	27.4318	28.7529	27.3478
010023	1.7659	0.8302	25.4272	26.1739	28.2135	26.6957
010024	1.5996	0.8302	22.0819	25.0715	26.6636	24.5917
010025	1.2916	0.8464	22.7635	23.6186	23.8617	23.4234
010027	0.7390	0.7644	16.4682	17.0513	18.2508	17.2827
010029	1.5956	0.8464	23.9007	25.0468	24.3622	24.4413
010032	0.8804	0.7943	19.3311	18.5545	20.8458	19.6449
010033	2.1374	0.8754	27.4181	29.1471	29.2036	28.6057
010034	1.0161	0.8302	17.7457	19.1549	21.3728	19.3907
010035	1.2483	0.8632	24.2425	24.2746	26.5299	25.0070
010036	1.1531	0.7618	21.5796	24.2887	23.3876	23.0897
010038	1.3336	0.8025	23.7039	27.0752	28.9646	26.4793
010039	1.6469	0.8953	26.9919	28.6462	29.8034	28.4935
010040	1.6524	0.8022	24.3207	24.7657	25.9856	25.0415
010043	1.0886	0.8754	21.9774	23.9121	25.3633	23.7101
010044	1.0621	0.7618	22.5009	24.4276	23.4020	23.4236
010045	1.1534	0.7840	20.4927	23.1695	24.2450	22.5595
010046	1.5233	0.8022	23.4219	25.9105	25.4465	24.8784

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
010047	0.8828	0.7745	26.4851	19.7542	21.7349	22.0982
010049	1.1411	0.7644	21.7888	22.4248	23.1194	22.4566
010050	1.0831	0.8754	22.9620	24.4060	25.3678	24.2277
010051	0.8989	0.8731	18.7701	18.0305	20.0765	18.9092
010052	0.8785	0.8302	25.9233	36.3638	22.7571	28.5538
010054	1.1305	0.8679	23.3624	24.4810	25.4209	24.4491
010055	1.5990	0.8290	22.5396	22.4145	25.3306	23.4248
010056	1.5852	0.8754	23.7398	24.5754	25.7290	24.7311
010058	1.0206	0.8754	19.5092	17.0150	31.1865	21.2665
010059	1.0081	0.8679	23.0012	24.8199	27.8613	25.3460
010061	0.9840	0.8716	24.1185	25.2454	25.7048	25.0192
010062	1.0319	0.7743	21.4805	21.7112	22.9491	22.0345
010064	1.7118	0.8754	24.8155	27.6149	26.6333	26.3107
010065	1.5058	0.8632	23.0477	24.3346	24.4454	23.9571
010066	0.8889	0.7618	19.8692	25.4612	25.6052	23.6383
010068	***	*	22.7156	24.4145	*	23.5620
010069	0.9714	0.7618	23.1243	23.6272	27.3438	24.6221
010072	***	*	24.4989	*	*	24.4989
010073	0.9449	0.7618	18.3963	19.0046	20.7833	19.3950
010078	1.6137	0.8025	23.5279	24.3828	25.2897	24.4154
010079	1.2408	0.8953	22.7337	22.3034	23.1025	22.7297
010083	1.1816	0.8084	22.4279	24.0036	25.0422	23.8761
010084	***	*	26.3238	26.5079	27.5069	26.7176
010085	1.3041	0.8679	24.2609	23.6280	24.0475	23.9696
010086	1.0253	0.7618	22.2096	21.5584	26.9753	23.3510
010087	2.2143	0.7828	22.4318	24.8320	27.4929	24.7678
010089	1.2954	0.8754	25.0811	26.2628	25.9719	25.7580
010090	1.7253	0.8000	26.0494	26.3957	25.6110	26.0163
010091	0.9052	0.7664	23.1310	22.5272	23.6555	23.1157
010092	1.4950	0.8731	26.6796	26.9959	28.8433	27.5243
010095	0.8395	0.8731	16.5250	17.0024	17.8248	17.1164
010097	0.7533	0.8302	19.4511	19.2481	18.4218	18.9975
010099	0.9931	0.7618	20.8383	20.6736	22.3686	21.2840
010100	1.7251	0.8084	23.8919	25.1460	25.4357	24.8856
010101	1.1725	0.8632	24.2575	25.0974	26.2744	25.2377
010102	0.9522	0.8302	25.6158	26.9859	26.6943	26.4292
010103	1.8652	0.8754	27.8272	28.9636	30.4032	29.0802
010104	1.8542	0.8754	27.6471	28.3126	30.4963	28.7445
010108	1.0589	0.8302	24.6740	25.4325	26.8900	25.7632
010109	0.9572	0.8023	17.6733	21.0449	21.9300	20.0805
010110	0.7379	0.7833	26.0038	19.8738	22.1175	22.5117
010112	0.9788	0.7618	17.1833	20.4027	21.3904	19.7108
010113	1.6326	0.7828	22.3282	24.7170	25.0704	24.0143
010114	1.4027	0.8754	25.6152	25.7090	25.3666	25.5603
010118	1.2131	0.8302	21.4630	22.7191	25.3689	23.1089
010120	1.0321	0.7618	20.9019	22.1868	22.8177	21.9917
010125	1.0383	0.8094	21.5123	22.8911	23.6549	22.7016
010126	1.1495	0.8302	23.9327	24.4957	25.7254	24.7212
010128	0.9058	0.7664	23.6647	24.9881	25.9421	24.9329
010129	1.0650	0.7752	22.1574	21.8502	24.4816	22.8949
010130	1.0042	0.8754	23.7528	24.5644	25.2790	24.5387
010131	1.3758	0.8953	26.4297	27.2707	28.0487	27.2978
010137	1.2330	0.8754	27.5782	28.5843	30.4361	28.8910
010138	0.6215	0.7684	16.7602	14.5551	15.0815	15.4265
010139	1.5830	0.8754	26.8726	28.1473	29.3560	28.1537
010143	1.2044	0.8632	26.2762	24.0674	25.0871	25.0925
010144	1.7235	0.7828	22.5133	22.3916	23.8601	22.9476
010145	1.4438	0.8731	24.5092	25.8293	27.3296	25.8988
010146	1.1256	0.8025	22.6586	22.6879	23.8076	23.0618
010148	0.8896	0.7618	23.9246	23.5714	25.0960	24.1958
010149	1.2287	0.8302	24.4805	25.4354	26.8920	25.7365
010150	0.9968	0.8464	23.6080	24.4098	25.0070	24.3381
010152	1.2616	0.7828	22.4075	23.7803	26.0793	24.1157
010157	1.1619	0.7878	23.3828	24.2206	27.1793	24.7601
010158	1.2539	0.7878	23.5533	25.5905	26.2363	25.0904
010162	***	*	33.8777	*	*	33.8777
010163	***	*	*	34.0325	*	34.0325
010164	1.2290	0.8632	*	23.2447	25.6759	24.4802
010165	***	*	*	28.8040	*	28.8040
010166	***	*	*	29.7256	*	29.7256
010167	1.6926	0.8754	*	*	*	*
010168	1.3071	0.9028	*	*	*	*
020001	1.7367	1.1852	35.4232	36.5298	38.1784	36.7202
020004	***	*	31.8004	*	*	31.8004
020006	1.2843	1.1852	34.3752	37.0211	37.2853	36.2134
020008	1.2050	1.2554	36.1250	39.3432	40.6783	38.7270
020012	1.3629	1.1852	32.5975	33.9375	36.1911	34.2982
020014	1.0565	1.1852	29.4472	30.9722	30.6343	30.3733

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
020017	2.0214	1.1852	35.4119	35.8804	38.2157	36.5161
020018	0.8982	1.9249	*	*	*	*
020019	0.9135	*	*	*	*	*
020024	1.1774	1.1852	29.5195	38.6934	39.9943	35.5854
020026	1.5382	1.9249	*	*	*	*
020027	0.9594	1.9249	*	*	*	*
020028	0.9512	1.1852	*	*	*	*
030001	1.4994	1.0224	32.4791	33.4178	35.9083	33.8237
030002	2.1093	1.0224	30.2200	31.0818	32.9094	31.4276
030006	1.7180	0.9407	27.0599	27.7421	29.1248	28.0036
030007	1.4627	1.1263	31.1928	33.7213	35.5226	33.5067
030009	***	*	26.5408	*	*	26.5408
030010	1.4422	0.9407	28.5684	30.6261	31.8640	30.4147
030011	1.5331	0.9407	28.1423	28.8203	30.2096	29.0993
030012	1.4346	1.0160	27.3895	29.1042	31.3068	29.3711
030013	1.5330	0.9866	27.0111	31.2815	31.9162	30.1315
030014	1.5797	1.0224	29.6582	29.8296	30.6308	30.0790
030016	1.2775	1.0224	29.1980	30.7896	31.1878	30.4662
030017	2.0561	1.0224	30.6007	34.4852	34.8488	33.3773
030018	1.3633	1.0224	29.4566	31.8056	31.7240	31.0144
030019	1.3013	1.0224	29.5921	30.1934	33.6553	31.0573
030022	1.7899	1.0224	30.5710	30.3746	35.0772	31.9484
030023	1.8151	1.1609	34.2142	35.8287	37.5523	35.8812
030024	2.1418	1.0224	31.9247	33.1797	35.3556	33.5460
030030	1.6947	1.0224	32.0994	34.4166	36.4772	34.2678
030033	1.3097	1.1263	28.7508	29.9383	32.0362	30.2709
030036	1.5439	1.0224	30.9834	33.0523	35.7464	33.4386
030037	1.9926	1.0224	31.2877	34.1079	35.1342	33.3946
030038	1.6470	1.0224	29.9314	31.7238	31.2928	31.0113
030040	***	*	27.5322	*	*	27.5322
030043	1.2286	0.8824	26.5834	27.3856	28.3158	27.4535
030055	1.4744	0.9988	27.1473	27.1621	31.0806	28.5337
030060	1.1691	*	24.8373	*	*	24.8373
030061	1.6358	1.0224	28.0696	28.1337	33.0847	29.7503
030062	1.2368	0.8824	26.6880	28.9587	29.9359	28.5908
030064	2.0318	0.9407	28.3853	29.8226	31.6632	30.0081
030065	1.6333	1.0224	29.5883	31.0817	31.4602	30.7663
030067	1.0076	0.9122	20.7591	27.4497	27.0784	25.0402
030068	1.1300	0.8824	23.1394	23.8792	26.0296	24.3903
030069	1.4773	1.1275	30.2224	29.7802	30.7723	30.2562
030071	0.9977	1.4402	*	*	*	*
030073	1.1304	1.4402	*	*	*	*
030074	0.9181	1.4402	*	*	*	*
030077	0.7963	1.4402	*	*	*	*
030078	1.1346	1.4402	*	*	*	*
030080	***	*	27.1360	28.6568	30.7682	28.9584
030083	1.3024	1.0224	27.4983	33.5302	35.8521	32.0956
030084	1.0208	1.4402	*	*	*	*
030085	1.6308	0.9407	26.8364	28.1388	29.0774	28.0477
030087	1.6982	1.0224	29.5962	31.2331	31.1094	30.6904
030088	1.3726	1.0224	27.8604	29.9758	30.5738	29.5062
030089	1.5949	1.0224	28.9068	30.1591	31.3179	30.1507
030092	1.5060	1.0224	31.7512	30.6343	30.4394	30.8528
030093	1.3167	1.0224	26.4430	27.8821	33.0720	29.2824
030094	1.5482	1.0224	31.5422	33.4050	34.2040	33.1206
030099	0.9137	0.8824	27.1402	26.9227	24.9127	26.3289
030100	2.0925	0.9407	31.5628	34.7532	35.0981	33.8070
030101	1.4922	1.1342	27.8302	30.6764	33.2139	30.6812
030102	2.4495	1.0224	31.6285	33.6247	36.9539	34.0956
030103	1.7730	1.0224	31.7322	32.2833	34.2770	32.8164
030105	2.3507	1.0224	31.2970	32.7449	33.9875	32.7844
030106	1.6207	1.0224	32.9840	36.4667	40.1657	36.8316
030107	1.9108	1.0224	35.6197	35.5386	35.4562	35.5311
030108	2.0613	1.0224	*	29.9395	34.8507	32.9308
030109	***	*	16.5906	*	*	16.5906
030110	1.6123	1.0224	31.4852	29.7949	36.2158	32.4784
030111	1.0449	0.9407	*	33.3711	28.5146	30.2239
030112	2.0028	1.0224	*	36.6601	33.4810	34.6271
030113	0.9100	1.4402	*	*	*	*
030114	1.4833	0.9407	*	*	28.8466	28.8466
030115	1.4703	1.0224	*	*	32.5885	32.5885
030117	1.2496	0.9801	*	*	*	*
030118	1.1429	1.0160	*	*	*	*
030119	1.2769	1.0224	*	*	*	*
030120	0.8667	1.0224	*	*	*	*
030121	1.0847	1.0224	*	*	*	*
030122	1.0530	1.0224	*	*	*	*
040001	1.0747	0.9097	22.9327	22.9948	24.4962	23.4596

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
040002	1.1717	0.7645	21.2020	25.0000	24.0487	23.3253
040004	1.6829	0.9097	27.1741	28.1117	29.2714	28.2063
040007	1.7414	0.8766	40.1291	29.1941	28.3305	32.3317
040010	1.4743	0.9097	24.2315	26.5287	28.2375	26.3914
040011	1.0295	0.7645	21.0967	22.2431	22.6327	22.0006
040014	1.3504	0.8766	26.4777	28.9855	34.8279	29.4950
040015	1.1198	0.7645	20.4279	20.1061	22.3148	20.9795
040016	1.7091	0.8766	25.8056	26.5911	26.4806	26.3036
040017	1.1225	0.8918	21.9147	23.8768	24.3772	23.3607
040018	1.1100	0.7814	24.0026	25.6751	26.2521	25.2934
040019	1.0401	0.8876	23.8706	24.9113	26.4932	25.0685
040020	1.6262	0.8876	22.6497	23.9470	26.1529	24.2425
040021	1.5502	0.8766	25.4046	26.1853	27.6799	26.3617
040022	1.4629	0.9097	29.5000	27.9902	30.0250	29.1594
040026	1.5441	0.9112	27.7931	29.5299	31.8588	29.7129
040027	1.5245	0.8523	21.4252	23.8220	25.7935	23.6377
040029	1.4303	0.8766	24.8409	25.1479	27.8882	25.9693
040036	1.6280	0.8766	27.6234	29.7150	30.4906	29.2738
040039	1.2304	0.8415	21.2712	21.4819	22.9807	21.9031
040041	1.1571	0.8766	23.7787	26.4964	26.4435	25.5535
040042	1.2898	0.9294	21.1716	19.8709	23.1661	21.3825
040047	1.0408	0.7762	22.4249	23.0358	23.3557	22.9634
040050	1.1977	0.7645	17.6906	18.5119	19.6946	18.6285
040051	0.9459	0.7645	21.3342	22.0394	22.1981	21.8574
040054	***	*	18.0509	19.5353	*	18.7591
040055	1.5581	0.7814	23.0448	24.9164	26.0150	24.6248
040062	1.6240	0.7814	23.8994	25.2303	25.6554	24.9291
040067	1.1142	0.7652	19.0471	18.9872	20.9700	19.6154
040069	1.0666	0.8876	24.8060	24.9996	23.3117	24.3664
040071	1.5794	0.8766	25.4680	25.2840	26.6645	25.8036
040072	1.1296	0.7645	22.4741	22.1058	22.9671	22.5263
040074	1.2584	0.8766	25.2699	26.2661	27.3897	26.2961
040076	1.0056	0.8766	23.5742	23.0954	24.7903	23.8277
040078	1.6693	0.9112	23.5915	26.1937	25.6886	25.0535
040080	1.0500	0.8423	24.1921	24.8760	26.5905	25.2949
040081	0.8888	0.8002	16.8437	17.2536	18.4759	17.5297
040084	1.2391	0.8766	27.7626	26.6449	28.1570	27.5101
040085	1.0083	0.8876	22.9916	25.7215	26.6987	25.1596
040088	1.6627	0.7759	22.4860	23.6276	24.7119	23.6216
040091	1.1948	0.8063	24.2398	23.1913	22.3311	23.2270
040100	***	*	21.3051	22.6131	24.5458	22.8470
040114	1.8338	0.8766	26.7581	27.7928	28.5702	27.7161
040118	1.5311	0.7645	26.0388	26.8908	26.5783	26.5256
040119	1.3869	0.8766	24.3680	24.2419	25.6779	24.7945
040126	***	*	15.6985	17.3715	*	16.4167
040132	***	*	*	22.0054	21.8140	21.8932
040134	2.3507	0.8766	31.9325	32.2832	34.9673	33.0719
040137	1.3584	0.8766	25.9979	27.7360	27.7638	27.1685
040138	1.5078	0.9097	27.8584	28.3342	33.0073	29.8707
040141	0.7864	0.9097	26.1041	30.3475	33.8791	29.9331
040142	1.5546	0.9112	21.4222	23.8620	23.1302	22.9025
040143	***	*	37.1976	*	*	37.1976
040144	***	*	21.4008	*	*	21.4008
040145	1.7997	0.8423	*	24.4367	20.3878	22.2708
040146	***	*	*	33.7876	*	33.7876
040147	1.7505	0.8766	*	*	35.7669	35.7669
040148	1.3585	0.8766	*	*	*	*
050002	1.4582	1.5640	35.5184	41.7336	43.1760	40.2441
050006	1.5894	1.2935	33.5751	37.1639	41.7714	37.1465
050007	1.4369	1.5211	43.4440	45.8773	49.5271	46.3434
050008	1.4565	1.5065	49.3167	46.8706	50.9569	49.0492
050009	1.6486	1.4125	43.0584	46.2186	49.7177	46.4665
050013	1.8251	1.4125	35.7591	43.5623	43.4906	40.8369
050014	1.2654	1.2973	36.0305	37.4135	42.2044	38.6396
050015	1.6268	*	32.2188	*	*	32.2188
050016	1.3205	1.1972	24.5768	31.0653	34.3863	30.1394
050017	2.0216	1.3088	39.6653	42.2200	44.4857	42.1785
050018	1.2690	1.2032	23.3204	31.8310	34.0338	29.0305
050022	1.5896	1.1972	31.6467	33.0592	36.6360	33.8302
050024	1.1168	1.1972	29.4062	33.4334	33.5247	32.1639
050025	1.8003	1.1972	33.5466	32.7476	36.9233	34.4465
050026	1.5605	1.1972	31.5250	33.1277	35.0306	33.2688
050028	1.2959	1.1972	27.3826	28.5736	28.1584	28.0606
050030	1.2275	1.1972	27.2945	30.9014	33.5654	30.5987
050036	1.5998	1.1972	33.8000	36.0905	37.4298	35.8311
050038	1.6176	1.5902	44.2265	48.7483	55.2197	49.5133
050039	1.6821	1.1972	35.2630	36.6943	34.9262	35.5984
050040	1.3886	1.2032	35.8322	35.7054	38.1665	36.6261

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
050042	1.4797	1.2935	37.3760	40.3326	40.5791	39.4488
050043	1.6172	1.5640	45.4887	48.2283	51.9529	48.5563
050045	1.3277	1.1972	25.0150	27.0676	28.5952	26.9312
050046	1.2009	1.2032	26.1926	29.1125	34.2529	29.6259
050047	1.7553	1.5065	55.9367	45.1675	48.5961	49.7774
050054	1.1787	1.1972	21.3650	24.0338	27.1320	24.3254
050055	1.3411	1.5065	42.9516	44.2926	48.2796	45.1984
050056	1.4236	1.2032	30.6126	32.7693	34.7964	32.7256
050057	1.6870	1.1972	30.0236	31.7467	33.7574	31.8602
050058	1.6319	1.2032	33.1409	37.2538	38.9843	36.4799
050060	1.5120	1.1972	29.9762	32.0196	34.1183	31.9988
050063	1.4493	1.2032	34.0906	36.3085	36.6301	35.6926
050065	***	*	34.9110	38.2421	42.0085	38.4619
050067	1.2068	1.2114	38.8070	40.1393	41.8988	40.2614
050069	1.7315	1.1985	34.6353	35.3850	38.1339	36.1121
050070	1.2564	1.5211	47.4099	46.4009	48.9362	47.6533
050071	1.4005	1.5902	50.7602	49.6495	52.0696	50.8737
050072	1.3909	1.5630	49.4344	50.0343	51.4538	50.3895
050073	1.2828	1.5518	49.9730	49.0069	50.6523	49.8763
050075	1.3622	1.5640	54.4089	49.8290	51.1187	51.5268
050076	1.8082	1.5518	52.3788	50.2039	50.5761	51.0240
050077	1.5357	1.1972	34.8660	36.5384	37.4989	36.4390
050078	1.2482	1.2032	32.0133	30.4274	37.1940	33.1215
050079	1.5753	1.5630	47.3449	48.8994	48.3017	48.1345
050082	1.6645	1.2032	38.2878	37.8905	42.0181	39.3655
050084	1.5655	1.2104	35.5196	39.5748	41.1276	38.7781
050089	1.3632	1.1983	33.9593	36.4018	39.6297	36.6479
050090	1.2560	1.5282	33.8953	37.7421	41.6026	37.7213
050091	1.0322	1.2032	32.1301	37.1223	40.1063	36.4136
050093	1.5575	1.1972	36.9481	36.8486	37.7244	37.1773
050095	***	*	*	*	44.2400	44.2400
050096	1.2535	1.2032	34.9237	33.1322	33.3803	33.8097
050099	1.5379	1.1983	33.4174	32.0650	34.3507	33.2478
050100	1.7374	1.1972	31.4404	33.3959	34.2839	33.0487
050101	1.3241	1.5518	42.4589	47.9327	48.7495	46.4307
050102	1.3930	1.1972	32.0617	32.8434	33.2837	32.8161
050103	1.5455	1.2032	34.0935	35.6773	37.3608	35.7535
050104	1.4136	1.2032	32.3043	33.6204	37.4417	34.5122
050107	1.5309	1.1972	32.5846	33.5687	36.5843	34.2447
050108	1.8616	1.3088	38.8672	42.0131	45.3460	42.0947
050110	1.2381	1.1972	26.8408	28.0670	30.9054	28.6075
050111	1.1657	1.2032	28.7875	31.8766	31.9394	30.8314
050112	1.5362	1.2032	37.7281	38.9483	39.9951	38.9375
050113	1.1689	1.5211	39.4882	42.8884	46.3471	42.8016
050114	***	*	34.0309	35.7274	37.5924	35.8070
050115	1.4695	1.1972	28.8051	32.5257	33.3013	31.6072
050116	1.6424	1.2032	36.8825	37.6018	45.7510	40.4041
050117	***	*	34.2020	35.0531	*	34.3889
050118	1.2468	1.2114	39.9683	41.6701	41.8191	41.1964
050121	1.2661	1.1972	30.6105	34.6244	35.1135	33.4903
050122	1.6222	1.2104	33.9812	34.0259	36.8821	34.9566
050124	1.2999	1.2032	30.2522	29.9944	31.7690	30.6984
050125	1.4809	1.5902	44.9523	47.7578	53.6300	49.3207
050126	1.5250	1.2032	31.7619	32.6686	35.1909	33.2843
050127	1.2874	1.3088	32.0355	40.7610	42.5226	37.9334
050128	1.4846	1.1972	31.1308	33.4233	34.2364	32.9850
050129	1.8867	1.1983	34.7359	36.9887	40.3786	37.3224
050131	1.4650	1.5518	45.3152	47.5257	52.8228	48.8797
050132	1.4131	1.2032	35.9199	39.6807	43.6747	39.6141
050133	1.5865	1.2973	31.9527	33.1814	35.2433	33.7197
050135	1.0163	1.2032	25.1813	25.3209	25.4431	25.3292
050136	1.3860	1.5282	43.3747	46.6619	51.8508	47.5150
050137	1.5121	1.2032	39.1496	40.2457	43.5305	41.2003
050138	1.6388	1.2032	45.3727	40.6343	45.1011	43.5015
050139	1.4255	1.2032	37.8986	38.7385	43.0734	40.1793
050140	1.2992	1.1983	40.9725	39.4954	42.7590	41.1015
050144	***	*	33.6662	38.2424	40.4760	37.3687
050145	1.5417	1.4797	42.2921	48.0796	49.4479	46.7694
050146	1.8178	*	*	*	*	*
050148	1.0935	*	28.2305	*	*	28.2305
050149	1.5496	1.2032	35.8821	37.3616	43.1926	39.0000
050150	1.2328	1.2973	33.6583	37.9946	43.5937	38.2559
050152	1.4460	1.5065	46.1553	51.6567	54.7176	50.9499
050153	1.4503	1.5902	42.8955	47.6374	50.4884	47.2439
050155	***	*	16.9516	16.7756	*	16.8520
050158	1.3623	1.2032	35.7805	39.9160	42.7874	39.6140
050159	1.2984	1.2032	32.5704	34.6915	35.0153	34.1448
050167	1.4989	1.2104	31.4798	34.0418	38.0742	34.4900

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
050168	1.5718	1.1985	37.9784	40.5973	40.8362	39.8630
050169	1.5141	1.2032	29.4693	31.4115	33.1130	31.4634
050173	1.3439	1.1985	29.0576	31.6717	32.3265	30.9929
050174	1.5485	1.5282	44.4199	48.1740	53.7113	48.9676
050175	***	*	33.3061	35.0152	*	34.1608
050177	***	*	24.0717	*	*	24.0717
050179	1.1896	1.2114	30.4973	31.6651	34.6558	32.3090
050180	1.5816	1.5630	42.0358	45.7099	48.7425	45.6265
050188	1.5401	1.5902	41.0943	43.7381	45.8501	43.4426
050189	1.0373	1.4797	30.1155	28.7580	31.5805	30.2846
050191	1.5029	1.2032	37.7805	37.8756	41.7185	39.1869
050192	0.9783	1.1972	27.1400	27.8386	27.4611	27.4788
050193	1.2326	1.1985	33.9520	29.0623	36.7240	32.9059
050194	1.3496	1.5954	44.7107	49.0030	49.8539	47.9020
050195	1.5745	1.5640	48.8595	53.5583	57.6563	53.3870
050196	1.0781	1.1972	34.0956	32.8293	41.1300	35.9362
050197	1.9804	1.5830	50.0728	52.9998	55.3173	52.8654
050204	1.4030	1.2032	32.0121	35.3954	38.8689	35.4360
050205	1.3877	1.2032	29.3334	30.6322	30.6117	30.1783
050207	***	*	30.0062	31.3431	*	30.6661
050211	1.3078	1.5640	35.0515	35.0289	42.9254	37.8246
050214	***	*	25.4647	*	*	25.4647
050215	***	*	48.8112	50.7578	*	49.8014
050219	1.3312	1.2032	26.4143	25.8378	26.7061	26.3098
050222	1.6180	1.1972	32.3882	33.7510	35.4045	33.9151
050224	1.6646	1.1985	32.5010	35.7280	37.3442	35.2849
050225	1.3992	1.1972	34.0836	35.1227	37.5252	35.6612
050226	1.5109	1.1985	32.4411	35.4597	36.5354	34.8258
050228	1.3090	1.5065	43.7939	47.1430	49.9063	46.9949
050230	1.5465	1.1985	34.0600	35.8490	38.8901	36.2987
050231	1.7143	1.2032	32.1813	33.7139	37.0245	34.3586
050232	1.7071	1.1972	26.3004	34.3242	35.4055	32.1887
050234	1.4522	1.1972	32.3726	34.8308	37.7125	34.9925
050235	1.4880	1.2032	30.5405	37.0858	39.1744	35.6934
050236	1.4577	1.2032	33.0686	32.6462	34.4257	33.3579
050238	1.5301	1.2032	33.3346	34.0823	35.1268	34.2459
050239	1.6814	1.2032	33.1148	35.9041	36.3257	35.1520
050240	***	*	36.1154	40.7427	*	38.4427
050242	1.3861	1.5954	46.4844	50.9882	53.8385	50.5812
050243	1.5756	1.1972	32.9385	36.1209	37.8538	35.6833
050245	1.3718	1.1983	27.3866	33.2556	34.7153	31.8988
050248	1.1233	1.4797	*	40.4941	46.0329	43.3520
050251	***	*	27.8452	*	*	27.8452
050253	***	*	23.5381	*	*	23.5381
050254	1.2793	1.3088	31.2386	33.0865	33.5069	32.6697
050256	***	*	29.6793	32.7159	32.6841	31.5755
050257	0.9390	1.1972	20.1829	24.0737	29.2651	24.4844
050261	1.2956	1.1972	29.2150	30.8704	33.7196	31.3402
050262	2.2137	1.2032	39.9946	41.4835	43.7709	41.7556
050264	1.3686	1.5640	47.7024	43.4181	50.1691	47.1232
050270	***	*	33.6855	36.0111	*	34.8609
050272	1.4211	1.1983	29.4671	30.9290	32.2584	30.9775
050276	1.1187	1.5630	41.1406	43.7943	47.2432	44.0838
050277	1.1811	1.2032	35.4443	35.0079	*	35.2189
050278	1.5508	1.2032	31.8712	34.3798	38.5689	35.0180
050279	1.1958	1.1983	29.7118	31.6738	32.1695	31.1950
050280	1.7353	1.2935	38.8341	41.3912	43.6243	41.3293
050281	1.4032	1.2032	29.4882	31.6639	31.0706	30.7708
050283	1.6161	1.5640	44.3122	43.6855	45.1132	44.3833
050289	1.6175	1.5211	44.2814	50.1762	52.0918	49.0232
050290	1.7586	1.2032	37.3563	40.6192	42.0099	39.9567
050291	1.9787	1.5282	38.4365	41.2100	44.6102	41.6384
050292	1.0606	1.1972	26.9786	27.3365	35.0372	29.9744
050295	1.4390	1.1972	34.7382	38.4256	39.7399	37.8500
050296	1.1381	1.5830	39.9842	42.5405	44.8135	42.4578
050298	1.2075	1.1983	30.2022	33.7864	33.6947	32.5826
050299	***	*	35.1249	32.3707	*	33.6024
050300	1.4005	1.1983	30.2874	33.6821	37.1275	33.7469
050301	1.2503	1.4681	35.9491	37.1103	36.3681	36.4675
050305	1.4124	1.5640	44.9681	48.5339	56.9756	50.1498
050308	1.5318	1.5902	43.7413	46.4180	49.0132	46.4319
050309	1.4539	1.3088	38.2659	40.1499	42.9280	40.4906
050312	***	*	36.8498	*	*	36.8498
050313	1.2017	1.2104	35.0478	37.5024	39.0663	37.2467
050315	1.3068	1.1972	33.2038	32.5538	37.3560	34.4363
050320	1.2613	1.5640	45.7686	46.2071	50.6708	47.5847
050324	1.7814	1.1972	34.5503	36.3474	37.1883	36.0615
050325	1.1836	1.2005	31.3730	37.0441	34.0343	34.2479

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
050327	1.6645	1.1983	33.9507	35.9349	36.9550	35.6205
050329	1.2707	1.1972	23.2927	33.0390	36.7669	31.1934
050333	1.0439	*	19.6352	18.6534	*	19.1327
050334	1.5870	1.4797	43.9656	47.2968	50.9834	47.4808
050335	1.3862	1.2114	30.9928	34.7192	37.2347	34.3861
050336	1.2383	1.2104	30.4664	31.5480	33.0325	31.7352
050342	1.2518	1.1972	29.2244	30.4226	29.8389	29.8444
050348	1.7778	1.1985	31.5156	32.7107	33.5276	32.6288
050349	0.9668	1.1972	24.4863	25.4266	23.1095	24.2537
050350	1.4256	1.2032	31.0136	31.7908	34.6747	32.4882
050351	1.5356	1.2032	30.6599	33.3064	35.0042	33.0094
050352	1.3549	1.3088	36.7673	37.0807	38.6265	37.4932
050353	1.5199	1.2032	29.4215	30.4206	37.1716	32.2263
050357	1.5072	1.1972	32.6763	36.2089	38.9244	35.9970
050359	1.1857	1.1972	29.8345	31.3391	30.3988	30.5271
050360	1.5232	1.5518	47.4497	52.3811	55.3738	51.8406
050366	1.1491	1.1987	33.6714	37.1527	41.8324	37.3706
050367	1.4841	1.5518	38.6330	40.1904	40.0453	39.6604
050369	1.4761	1.2032	30.6439	32.2467	33.3357	32.1010
050373	1.4391	1.2032	35.1380	34.3737	37.6695	35.7070
050376	1.7720	1.2032	34.3539	35.2837	36.7270	35.5031
050378	1.0573	1.2032	37.9904	40.1923	42.0480	40.0792
050380	1.6762	1.5902	46.0276	49.4258	52.5804	49.4116
050382	1.4498	1.2032	30.4014	32.6683	32.9248	31.9913
050385	1.3016	1.5282	36.8107	36.4188	36.5644	36.5960
050390	1.1228	1.1972	27.3183	27.9359	33.0463	29.3108
050391	***	*	17.2141	*	*	17.2141
050393	1.3848	1.2032	34.1743	35.6356	35.1887	35.0089
050394	1.6164	1.2032	27.4861	32.1894	32.9572	30.9413
050396	1.5626	1.1972	32.4918	37.3972	38.9944	36.2055
050397	0.8787	1.1972	28.3671	29.6825	31.1621	29.8108
050407	1.1900	1.5065	42.2748	44.6839	47.5591	44.8613
050411	1.3651	1.2032	38.8294	38.6328	42.9884	40.3381
050414	1.3187	1.3088	38.7585	41.8688	45.1621	42.0897
050417	1.3079	1.1972	32.9341	36.1222	37.9951	35.7521
050420	***	*	35.2869	39.9237	*	37.6935
050423	1.0116	1.1972	28.3768	31.9751	32.4108	31.1453
050424	1.9539	1.1972	34.5680	36.6091	37.5246	36.2772
050425	1.3777	1.3088	49.2245	46.6628	45.3743	46.8636
050426	1.4602	1.1985	33.2031	34.9855	37.6505	35.2298
050430	0.9393	1.1972	23.9045	24.5327	25.9368	24.7205
050432	***	*	33.1876	35.2416	*	34.2247
050433	***	*	21.3573	21.1287	23.0949	21.6681
050434	0.9988	1.1972	32.6255	33.7794	35.4807	33.9526
050435	1.1989	1.1972	30.6530	33.0372	35.7427	33.2052
050438	1.5504	1.2032	36.3026	36.2044	38.2855	36.9434
050441	1.9586	1.5902	44.5694	46.6160	49.2129	46.8432
050444	1.4087	1.2288	34.6313	37.6821	39.3947	37.5304
050447	2.2656	1.1972	26.7960	29.0780	27.1271	27.7357
050448	1.2943	1.1972	30.6201	32.7748	32.6682	32.0001
050454	1.9406	1.5065	38.5833	40.2811	43.5230	40.8869
050455	1.5603	1.1972	30.4606	34.5445	35.0232	33.3441
050456	***	*	21.6261	27.7659	27.9702	25.0704
050457	1.5982	1.5065	47.8947	50.0282	53.3175	50.4345
050464	1.7387	1.2114	38.3058	41.6235	42.6699	40.8478
050468	1.7696	1.2032	31.1111	35.7409	37.3416	34.8297
050469	***	*	30.6502	*	*	30.6502
050470	***	*	27.8678	31.0466	32.5041	30.5212
050471	1.7142	1.2032	35.4768	36.8680	36.8185	36.4104
050476	1.4103	1.4681	38.7856	41.1042	41.7566	40.5869
050477	***	*	37.7668	40.1566	*	39.0877
050478	1.0317	1.1972	40.2558	41.1668	41.5635	41.0395
050481	1.5137	1.2032	36.1394	38.8650	42.8536	39.2911
050485	1.6495	1.2032	36.1488	34.6219	34.7078	35.1977
050488	1.4371	1.5640	42.6854	45.0630	49.3604	45.8657
050491	***	*	34.3598	*	*	34.3598
050492	1.3245	1.1972	28.0826	30.7718	32.6609	30.4679
050494	1.4327	*	38.1177	40.6384	*	39.3703
050496	1.6953	1.5630	48.2468	51.6363	56.7446	52.3161
050498	1.3488	1.3088	37.1667	41.0350	45.3508	41.1741
050502	1.6484	1.2032	28.7046	31.8872	32.9791	31.1615
050503	1.5137	1.1972	34.0994	37.3605	37.7210	36.4448
050506	1.5258	1.1972	37.7420	39.8586	40.6534	39.4430
050510	1.3261	1.5065	52.5376	49.4533	51.3143	51.0106
050512	1.4936	1.5640	50.9264	48.8057	50.1470	49.9316
050515	1.3742	1.1972	38.9542	40.2957	42.0106	40.5532
050516	1.5086	1.3088	39.8161	43.0249	45.6228	42.8823
050517	1.2962	1.1983	20.0213	22.4096	29.3694	23.6400

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
050523	1.2875	1.5630	40.6535	43.4579	46.9870	43.8657
050526	1.1838	1.1985	28.1997	33.3964	35.5457	32.2794
050528	1.1507	1.1972	31.4941	36.2908	38.3051	35.4348
050531	1.0514	1.2032	27.1974	28.3348	28.4890	28.0136
050534	1.4335	1.1972	33.1666	36.6447	38.1892	36.0378
050535	***	*	34.6143	37.8174	*	36.2328
050537	1.4811	1.3088	34.9931	38.2145	41.5275	38.3289
050541	1.4181	1.5830	52.5908	48.0867	51.4545	50.6109
050543	0.7528	1.1985	29.4443	24.4913	32.8367	28.6013
050545	0.6921	1.2032	31.3080	35.3209	*	33.2475
050546	0.6795	1.1972	33.2245	36.5099	*	34.9356
050547	0.9720	1.5282	34.8401	33.8036	*	34.2850
050548	0.7102	1.1985	39.2234	41.1075	*	40.1570
050549	1.6510	1.4681	35.2792	38.3927	40.6796	38.1013
050550	***	*	30.9612	34.9476	39.2163	34.7858
050551	1.3450	1.1985	34.0467	37.2506	37.6223	36.3787
050552	0.9459	1.2032	33.0711	33.9810	35.3468	34.1390
050557	1.5989	1.2114	33.3654	35.7023	39.2224	36.0927
050561	1.4983	1.2032	38.0196	38.2543	40.1567	38.9096
050567	1.5114	1.1985	35.7063	37.6384	39.0114	37.5242
050568	1.2462	1.1972	25.2337	26.0908	26.7733	26.0580
050569	1.3207	*	31.6785	*	*	31.6785
050570	1.5522	1.1985	34.5161	38.4373	40.6761	37.8616
050571	***	*	34.7627	39.0649	*	36.9575
050573	1.5659	1.1972	34.7279	35.2842	36.8561	35.6380
050575	1.3186	1.2032	25.1457	23.7990	22.1018	23.5661
050577	***	*	32.3744	*	*	32.3744
050578	1.4339	1.2032	35.2390	31.3639	43.4917	36.9427
050579	***	*	42.5081	*	*	42.5081
050580	1.1501	1.1985	31.5806	34.1531	35.0966	33.6235
050581	1.4146	1.2032	34.0136	37.7567	40.0909	37.3049
050583	1.6432	1.1972	34.5747	37.4450	40.5845	37.4777
050584	1.4504	1.1983	30.3434	30.7839	31.9910	31.0596
050585	***	*	22.2521	*	*	22.2521
050586	1.3092	1.1983	26.4782	31.3513	31.1932	29.6940
050588	1.3729	1.2032	32.7556	37.7387	39.4251	36.6374
050589	1.2415	1.1985	34.5100	37.6886	37.2056	36.5102
050590	1.2811	1.3088	38.4971	41.7519	44.3382	41.5523
050591	***	*	30.6106	34.7133	*	32.5892
050592	***	*	27.3606	31.8053	32.2376	30.0890
050594	***	*	36.5256	42.0788	*	39.2148
050597	1.2969	1.2032	28.8294	31.5625	32.8987	31.1676
050599	1.8594	1.3088	32.7835	34.7187	36.6146	34.7402
050601	1.5286	1.2032	36.0572	39.7717	43.2404	39.7372
050603	1.4514	1.1985	34.0275	35.0279	35.4809	34.9113
050604	1.3442	1.5902	55.0821	49.4446	49.6068	50.8842
050608	1.2713	1.1972	30.4169	31.2909	30.7280	30.8127
050609	1.3266	1.1985	41.7208	39.7397	43.4555	41.6214
050613	***	*	42.8108	42.9930	*	42.8892
050615	***	*	35.9547	39.1299	*	37.5269
050616	1.4916	1.2032	37.7284	37.1200	40.7388	38.5140
050618	1.0232	1.1972	31.3182	33.1472	34.9177	33.1407
050624	1.3469	1.2032	33.9594	35.9346	39.2553	36.4378
050625	1.7643	1.2032	38.6591	41.0439	44.8482	41.6103
050633	1.2411	1.1972	36.8302	38.4916	40.7383	38.7407
050636	1.2728	1.1972	32.5576	33.0718	35.4565	33.7352
050641	1.3419	1.2032	39.6921	32.3586	32.0508	34.3181
050644	1.0503	1.2032	28.8237	30.7981	33.2777	30.9591
050660	1.7530	*	*	*	*	*
050662	0.7934	1.5902	33.2446	38.3017	*	35.5809
050663	1.4158	1.2032	27.7334	17.7035	17.7252	19.8507
050667	0.9377	1.4125	24.2771	25.9161	25.8460	25.2825
050668	1.2595	1.5065	56.6555	51.6049	52.7011	53.2603
050674	1.2608	1.3088	48.0893	47.0720	48.6880	47.9701
050677	1.3718	1.2032	38.5770	39.2161	41.8130	40.0238
050678	1.3259	1.1985	32.4473	33.7633	35.8411	34.1151
050680	1.2898	1.5518	38.2871	37.9856	39.0389	38.4556
050682	0.8353	1.1972	17.9077	22.2193	22.3903	20.9020
050684	1.1173	1.1972	27.5256	28.8378	33.5915	30.1555
050686	1.5782	1.1972	41.0188	39.7757	42.1444	41.0018
050688	1.2095	1.5902	44.1510	49.4062	53.2741	49.0718
050689	1.5964	1.5630	45.0951	48.8533	48.9935	47.6639
050690	1.2603	1.5282	50.9094	49.0226	51.6179	50.5323
050693	1.3935	1.1985	34.5797	39.6838	42.8266	38.9562
050694	1.0550	1.1972	30.7858	32.1065	34.8486	32.6640
050695	***	*	39.6004	49.0340	*	44.6756
050696	2.2704	1.2032	37.3837	39.8963	39.4353	38.9126
050697	1.1055	1.2935	16.6605	22.1441	26.7600	21.2678

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
050699	***	*	28.9083	21.5725	*	25.4400
050701	1.3490	1.1972	31.9529	34.9876	37.2839	34.8714
050704	1.0457	1.2032	29.7740	31.6097	32.2017	31.2016
050707	***	*	35.7311	43.5555	44.0254	40.8930
050708	1.5222	1.1972	30.5860	31.8442	28.3074	30.2207
050709	1.4494	1.1972	26.8549	24.5621	29.5364	27.1496
050710	1.2461	1.1972	45.8022	44.2482	46.2533	45.4333
050713	***	*	21.1273	21.4825	*	21.2886
050714	1.4007	1.5954	31.9527	34.1542	42.9797	36.5753
050717	1.5515	1.2032	39.3227	38.8773	37.0875	38.4093
050718	***	*	25.5140	31.9622	*	28.5587
050720	0.9629	1.1985	29.4726	30.3595	32.1173	30.5950
050722	0.9056	1.1972	31.4867	33.7991	35.6741	33.7782
050723	1.3959	1.2032	38.5446	38.7140	42.1571	39.9881
050724	2.0014	1.1972	31.6910	35.2344	35.1020	34.1987
050725	0.8711	1.2032	24.3100	30.0580	28.8389	27.6838
050726	1.5386	1.2114	30.6479	28.6361	30.6105	29.9373
050727	1.3488	1.2032	33.9118	32.7783	33.0932	33.2505
050728	***	*	39.3581	41.8263	*	40.4993
050729	***	*	36.5432	38.1882	*	37.4033
050730	***	*	37.0629	39.2046	*	38.1210
050732	2.3249	1.1972	*	33.6831	34.3475	34.0205
050733	1.5889	1.2935	*	40.1517	40.6320	40.3893
050734	***	*	*	31.2883	*	31.2883
050735	1.3945	1.2032	*	*	36.6081	36.6081
050736	1.2088	1.2032	*	*	41.8938	41.8938
050737	1.5003	1.2032	*	*	38.0424	38.0424
050738	1.5039	1.2032	*	*	43.9259	43.9259
050739	1.6285	1.2032	*	*	57.2480	57.2480
050740	1.4580	1.2032	*	*	54.0370	54.0370
050741	1.4520	1.2032	*	*	51.1526	51.1526
050742	1.4461	1.2032	*	*	39.2532	39.2532
050744	1.7431	1.1985	*	*	48.4951	48.4951
050745	1.3420	1.1985	*	*	42.5523	42.5523
050746	1.8199	1.1985	*	*	43.2015	43.2015
050747	1.5410	1.1985	*	*	44.5887	44.5887
050748	1.1282	1.2104	*	*	43.1008	43.1008
050749	1.3889	1.2032	*	*	28.2000	28.2000
050750	***	*	*	*	33.9915	33.9915
050751	2.8440	1.2032	*	*	29.5488	29.5488
050752	1.4062	1.2032	*	*	39.8035	39.8035
050753	1.6858	1.2032	*	*	*	*
050754	1.1892	1.5211	*	*	*	*
050755	1.3602	1.2032	*	*	*	*
050757	1.5949	1.1972	*	*	*	*
050758	1.3400	1.1983	*	*	*	*
050759	2.2078	1.1972	*	*	*	*
060001	1.5191	1.0374	29.6191	31.0018	32.4226	30.9997
060003	1.4093	1.0374	29.4809	31.3616	31.8637	30.9378
060004	1.1120	1.0549	32.4609	32.0095	34.8428	33.1192
060006	1.3136	0.9311	25.2139	27.2057	27.6453	26.6966
060008	1.2588	0.9311	23.0947	26.5175	27.2071	25.5279
060009	1.4731	1.0549	31.5210	32.4208	34.0151	32.6691
060010	1.5403	0.9722	27.1916	29.5304	30.6424	29.1100
060011	1.5181	1.0549	35.1573	32.1001	34.4171	33.8462
060012	1.5547	0.9712	27.3885	28.7724	29.4365	28.5096
060013	1.5942	0.9311	26.8675	27.9145	28.0800	27.6095
060014	1.8792	1.0549	31.0542	31.9389	33.0366	32.0064
060015	1.8683	1.0549	32.5285	32.2927	36.3296	33.6079
060016	1.1864	0.9311	26.5427	27.1430	28.3055	27.3084
060018	1.2892	0.9311	24.1086	25.3897	26.5788	25.3469
060020	1.5528	0.9311	24.5992	25.9147	26.7362	25.7389
060022	1.6005	0.9712	28.2944	29.3379	31.9376	29.8735
060023	1.6260	1.0374	29.5760	31.1556	32.7922	31.1712
060024	1.8695	1.0549	30.0279	31.5411	32.8206	31.5107
060027	1.5947	1.0374	29.6121	30.9212	31.6134	30.7139
060028	1.4304	1.0549	31.6900	32.1656	33.4966	32.4486
060030	1.4283	0.9722	27.8642	29.9513	31.2932	29.7054
060031	1.5352	1.0374	27.8345	29.3907	30.7381	29.3064
060032	1.4893	1.0549	31.0686	32.7383	34.6447	32.7837
060034	1.7122	1.0549	30.9359	32.1252	33.3656	32.1080
060036	1.0963	0.9311	20.3226	22.8256	20.9370	21.3447
060041	0.9254	0.9311	24.6142	25.9710	31.4739	27.2231
060043	0.9724	0.9311	18.2143	21.9955	23.3908	21.1623
060044	1.1929	0.9311	26.5611	24.8352	28.9200	26.6865
060049	1.4365	0.9569	29.3724	30.2192	32.1589	30.6365
060054	1.4816	0.9646	24.3389	25.0980	24.6721	24.6996
060064	1.7027	1.0549	32.3681	33.2428	37.2407	33.8167

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
060065	1.4027	1.0549	32.4735	33.8538	34.9205	33.7658
060071	1.1340	0.9311	27.6657	28.1762	31.5388	29.2654
060075	1.3866	1.1062	32.2545	37.6023	35.8081	35.2183
060076	1.2625	0.9311	26.5631	30.7808	31.6044	29.6214
060096	1.6137	1.0374	32.1310	37.8243	38.2249	36.0402
060100	1.7214	1.0549	32.6104	33.2145	33.5356	33.1202
060103	1.3718	1.0374	31.6314	32.9690	33.7542	32.8052
060104	1.4290	1.0549	32.4232	35.4409	37.1434	34.8963
060107	1.5071	1.0549	26.8388	28.0660	30.3991	28.4352
060112	1.6324	1.0549	34.9272	34.7116	35.1308	34.9386
060113	1.4266	1.0549	*	32.6073	35.2097	33.9050
060114	1.3912	1.0549	*	34.8536	35.3056	35.0949
060115	0.8489	0.9311	*	*	*	*
060116	1.2784	1.0374	*	*	33.1547	33.1547
060117	1.4377	0.9311	*	*	28.3112	28.3112
060118	1.4247	0.9311	*	*	*	*
060119	2.0274	0.9722	*	*	*	*
070001	1.5931	1.2600	35.8958	37.0403	37.9438	36.9874
070002	1.8120	1.2214	33.4398	34.7636	36.4269	34.8872
070003	1.1291	1.2214	34.1352	35.6320	36.0524	35.2932
070004	1.1776	1.2214	29.4448	29.9557	31.2115	30.2315
070005	1.4766	1.2600	33.7813	34.9404	36.5502	35.0812
070006[6]	1.3529	1.3003	37.9148	39.3935	41.2165	39.5150
070007	1.2873	1.2214	35.9617	36.2914	37.0984	36.4564
070008	1.2537	1.2214	28.5506	30.7305	35.4969	31.5225
070009	1.3430	1.2214	32.9299	35.5670	36.6382	35.0006
070010	1.6830	1.2869	35.3730	36.7227	38.6114	36.9449
070011	1.4127	1.2214	31.8987	31.6843	32.6835	32.0964
070012	1.4105	1.2214	29.4216	31.9345	33.2477	31.5140
070015	1.4371	1.2704	35.3385	37.3454	39.9249	37.5872
070016	1.4989	1.2600	31.4930	33.2391	34.1266	32.9413
070017	1.3636	1.2600	34.0490	35.6456	37.5855	35.7990
070018[6]	1.3798	1.3003	39.7515	41.8460	42.4771	41.4030
070019	1.3848	1.2600	34.5125	33.7246	35.8618	34.6878
070020	1.2998	1.2214	33.6453	32.9714	35.6542	34.1192
070021	1.1850	1.2214	36.9241	38.5623	39.7793	38.4037
070022	1.6657	1.2600	39.0462	40.2283	41.4721	40.2894
070024	1.3650	1.2214	35.2323	34.7419	36.8997	35.6423
070025	1.7411	1.2214	32.4085	34.5887	36.1322	34.3751
070027	1.4461	1.2214	29.8513	30.4433	33.5979	31.3091
070028	1.5687	1.2869	35.1966	38.0855	40.9645	38.1035
070029	1.2876	1.2214	30.9299	31.0662	32.8504	31.6084
070031	1.2886	1.2600	30.1915	30.4054	30.5924	30.4015
070033	1.4507	1.2869	40.1594	41.7955	44.6717	42.2685
070034[6]	1.4229	1.3003	38.3965	40.1685	42.4111	40.3341
070035	1.2487	1.2214	30.7440	32.2766	33.4047	32.1122
070036	1.6106	1.2214	38.3413	42.3391	43.6374	41.4913
070038	0.8866	1.2600	25.7914	35.8053	29.9516	29.4515
070039	0.9489	1.2600	36.1369	34.7219	32.7153	34.7200
070040	1.0777	1.2214	*	*	*	*
080001	1.6422	1.0734	32.0105	33.5310	34.9507	33.5158
080002	***	*	29.6800	31.3391	33.0404	31.3610
080003	1.6240	1.0734	30.7697	34.3048	30.5132	31.8523
080004	1.5576	1.0605	30.1094	32.2443	34.3854	32.3024
080006	1.3095	1.0265	27.4749	28.8862	31.0327	29.2093
080007	1.4821	1.0868	30.1100	31.1645	33.4782	31.6266
090001	1.7470	1.0974	36.6577	38.3043	40.1658	38.3545
090003	1.2353	1.0684	31.0419	32.1960	34.4430	32.4446
090004	1.9221	1.0974	35.6964	37.3798	38.5681	37.2415
090005	1.4079	1.0684	33.0178	33.7448	35.2884	34.0317
090006	1.3916	1.0684	29.4912	31.3562	32.3654	31.0336
090008	1.3020	1.0684	32.0745	33.7471	36.6633	34.0300
090011	2.0092	1.0974	36.7579	38.0654	39.0111	37.9697
100001	1.4977	0.9071	26.4631	27.2809	27.8526	27.2117
100002	1.4286	1.0002	27.2350	28.7068	30.6668	28.8638
100006	1.6266	0.9166	29.1505	28.3673	28.9769	28.8246
100007	1.5841	0.9166	28.5702	29.0472	30.3379	29.3443
100008	1.6967	0.9845	29.1705	30.3392	32.1679	30.5838
100009	1.3613	0.9845	27.4424	27.8618	30.0492	28.3838
100012	1.6169	0.9483	28.4600	29.8353	30.8626	29.7789
100014	1.4501	0.9052	25.1524	27.4019	27.4064	26.6909
100015	1.2723	0.8984	26.0916	27.2483	28.6825	27.3090
100017	1.6227	0.9052	27.9654	28.2402	29.8705	28.7078
100018	1.6118	0.9801	30.2423	30.6545	32.8642	31.2766
100019	1.6093	0.9383	28.6630	30.3008	31.4549	30.1359
100020	***	*	27.1257	*	*	27.1257
100022	1.6472	1.0002	32.8088	36.7912	36.3355	35.3154
100023	1.5395	0.9052	25.2652	25.4270	27.1032	26.0121

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
100024	1.2903	0.9845	29.1894	29.5423	29.8918	29.5374
100025	1.7152	0.8616	23.3843	26.7013	27.1665	25.7517
100026	1.5790	0.8616	23.4730	26.0147	27.3044	25.6442
100027	***	*	18.9432	*	*	18.9432
100028	1.3546	0.9383	27.7497	27.5664	28.7801	28.0289
100029	1.2103	0.9845	28.8842	30.5382	31.6006	30.3882
100030	1.3535	0.9166	24.6314	25.3513	26.3113	25.4482
100032	1.6734	0.8984	26.8162	26.9275	27.8942	27.2245
100034	1.7956	0.9845	28.1280	27.2915	28.9387	28.1276
100035	1.6018	0.9737	29.4803	30.2382	32.5593	30.7190
100038	1.7175	1.0002	31.3403	31.6657	32.8392	31.9635
100039	1.5742	1.0002	28.2531	29.3699	29.0236	28.8795
100040	1.7002	0.9071	26.2429	27.2835	28.3366	27.2953
100043	1.4115	0.8984	26.4221	27.0054	26.8417	26.7597
100044	1.5461	0.9887	30.3659	33.1141	34.3920	32.6326
100045	1.3109	0.9052	29.7375	26.5413	25.5621	27.1978
100046	1.4578	0.8984	26.9469	26.7702	27.7878	27.1809
100047	1.6993	0.9629	26.7674	29.9729	31.4072	29.3536
100048	0.9287	0.8616	19.3226	20.2657	21.7693	20.4251
100049	1.2229	0.8698	24.0385	24.5571	27.6316	25.3725
100050	1.1478	0.9845	21.5101	25.3354	23.5222	23.4898
100051	1.3817	0.9166	28.0946	28.6225	30.1492	29.0850
100052	1.4597	0.8698	23.6796	23.4036	25.1110	24.0882
100053	1.3314	0.9845	28.5118	31.7415	31.9268	30.6750
100054	1.4053	0.8685	28.7646	30.5515	30.9840	30.1178
100055	1.4673	0.8984	25.6243	27.3826	29.7027	27.4754
100057	1.4389	0.9166	24.8010	26.3134	27.7045	26.3256
100061	1.5263	0.9845	31.4413	30.4528	31.9174	31.2654
100062	1.6288	0.8616	25.1280	25.9597	26.3067	25.8139
100063	1.2912	0.8984	25.5097	26.4139	27.0769	26.3653
100067	1.4254	0.8984	26.8628	27.4762	27.5501	27.3164
100068	1.6639	0.9052	26.1341	27.6576	27.7707	27.1967
100069	1.5191	0.8984	25.7450	27.2108	29.0486	27.3039
100070	1.6948	0.9737	26.8461	29.2005	29.1117	28.3502
100071	1.3016	0.8984	26.3768	25.3667	25.1883	25.6303
100072	1.3890	0.9052	25.7962	27.1889	27.6947	26.8993
100073	1.7633	1.0002	30.5845	29.4165	31.0395	30.3569
100075	1.5144	0.8984	25.7612	27.6534	26.7571	26.7480
100076	1.2089	0.9845	23.4551	24.0412	24.0280	23.8481
100077	1.3903	0.9629	30.6925	30.7564	27.9783	29.8156
100079	1.4455	*	*	*	*	*
100080	1.6166	1.0002	28.2188	29.5346	31.0516	29.6122
100081	0.9395	0.8616	16.9756	19.5711	19.7406	18.7146
100084	1.7032	0.9166	27.4947	32.7503	30.6301	30.2194
100086	1.3910	1.0002	28.5971	29.9072	31.3187	29.9266
100087	1.8439	0.9737	29.5823	30.5938	32.1314	30.7630
100088	1.5782	0.9071	26.7574	28.2825	29.4952	28.3038
100090	1.4705	0.9071	26.5703	27.6175	28.9581	27.7930
100092	1.5190	0.9383	27.8341	26.6315	28.6782	27.7167
100093	1.7252	0.8616	21.6438	22.5555	23.4847	22.5925
100099	1.0283	0.8698	25.8454	26.2395	28.0688	26.7414
100102	1.1033	0.8616	26.1015	27.8551	29.0396	27.7077
100105	1.5861	0.9722	29.9745	30.9915	30.8936	30.6091
100106	1.0483	0.8616	24.7650	24.8098	25.6288	25.0616
100107	1.1887	0.9483	27.4760	30.5764	31.2954	29.8961
100108	0.8653	0.8616	21.3540	22.6270	22.8153	22.2181
100109	1.2494	0.9052	25.5669	26.2446	26.7380	26.2241
100110	1.5719	0.9166	29.4788	29.5985	30.3758	29.8439
100113	1.9750	0.9414	28.0440	29.2429	30.6037	29.3071
100114	1.7025	0.9845	29.2862	30.2544	32.3956	30.6152
100117	1.2427	0.9071	27.7198	28.4928	30.0281	28.8266
100118	1.3882	0.8616	27.6438	27.0981	28.3201	27.7205
100121	1.1206	0.8698	26.2990	27.9353	25.0320	26.4001
100122	1.2313	0.8685	24.6285	26.7175	27.6178	26.3638
100124	1.1992	0.8616	24.0333	24.8880	26.2329	25.0386
100125	1.2232	0.9845	29.7750	31.7749	33.3499	31.6849
100126	1.3207	0.8984	29.6247	28.3213	28.9164	28.9571
100127	1.5766	0.8984	26.0923	27.4632	27.0686	26.8842
100128	2.1323	0.8984	29.2566	30.0324	30.6202	30.0011
100130	1.1415	1.0002	26.0268	28.3651	29.5763	28.0238
100131	1.4730	0.9845	27.8164	29.7647	30.9614	29.6471
100132	1.2882	0.8984	26.0526	27.8180	27.6632	27.2146
100134	0.8985	0.8616	20.7367	21.6544	22.9635	21.8252
100135	1.6378	0.8963	26.7030	29.1856	29.8452	28.5455
100137	1.3331	0.8698	24.8519	26.8391	28.3000	26.7265
100139	0.8645	0.9414	18.2197	21.1310	21.4418	20.1385
100140	1.1162	0.9071	26.1352	27.8352	28.5485	27.5013
100142	1.1345	0.8616	24.8853	25.6999	26.8995	25.8488

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
100150	1.2582	0.9845	26.8492	27.7740	29.3711	27.9653
100151	1.7425	0.9071	30.6447	29.7267	31.3846	30.5882
100154	1.6106	0.9845	28.2506	29.7332	31.3640	29.8242
100156	1.1426	0.9414	27.5706	28.3927	28.3060	28.1077
100157	1.5713	0.8984	29.7455	30.3086	30.3359	30.1505
100160	1.2523	0.9845	30.7454	30.6902	32.3136	31.2769
100161	1.5304	0.9166	28.0545	29.5673	30.8984	29.5199
100166	1.5061	0.9737	28.8685	30.1811	31.9072	30.2726
100167	1.2256	1.0002	30.2166	31.7813	32.4740	31.5299
100168	1.5602	1.0002	27.6739	27.0938	28.0543	27.6186
100172	***	*	20.7857	22.2183	20.5518	21.2385
100173	1.6082	0.8984	26.5436	28.6402	30.2491	28.5130
100175	0.9477	0.8616	23.9665	25.0913	26.1723	25.0711
100176	1.8219	1.0002	30.7087	33.3181	35.5849	33.1523
100177	1.3284	0.9383	28.0089	29.6284	31.0085	29.5578
100179	1.7392	0.9071	29.1111	29.2795	30.5439	29.6572
100180	1.5105	0.8984	29.9238	31.0099	31.5485	30.8521
100181	1.1559	0.9845	24.3708	23.9656	26.0682	24.7892
100183	1.2819	0.9845	29.0270	30.5042	32.9893	30.7996
100187	1.3636	0.9845	27.8144	30.7705	31.6660	30.0567
100189	1.3343	1.0002	28.8320	29.9376	30.5516	29.8041
100191	1.3359	0.8984	28.3710	29.4533	30.9212	29.5996
100200	1.3683	1.0002	28.7694	29.6400	29.0731	29.1622
100204	1.5810	0.9414	27.4763	27.2819	29.9334	28.2777
100206	1.2766	0.8984	27.0295	27.7551	28.8625	27.8942
100209	1.5223	0.9845	26.8473	28.5336	29.0462	28.1490
100210	1.5650	1.0002	29.8515	32.0830	32.4566	31.4643
100211	1.2503	0.8984	24.7533	26.2859	28.8328	26.5627
100212	1.4629	0.8616	26.1846	27.7960	29.2500	27.7626
100213	1.5366	0.9737	27.9283	29.5218	30.2271	29.2006
100217	1.3068	0.9722	27.3989	27.7683	30.3325	28.4915
100220	1.6195	0.9483	28.3868	29.3601	30.8292	29.5183
100223	1.5322	0.8685	25.0332	26.1115	27.6775	26.3167
100224	1.2618	1.0002	26.6446	28.0455	29.2008	27.9620
100225	1.3079	1.0002	28.5259	30.8782	32.6906	30.6977
100226	1.3024	0.9071	28.8165	28.8791	30.2857	29.3588
100228	1.3937	1.0002	28.1396	30.1635	31.0222	29.7498
100230	1.3375	1.0002	29.8493	31.9448	34.6133	32.1790
100231	1.7082	0.8616	25.7037	26.6773	28.3652	26.9114
100232	1.2637	0.9414	28.5537	28.3892	29.3797	28.7739
100234	1.3297	1.0002	27.4456	28.8835	29.7818	28.7295
100236	1.4325	0.9629	28.9955	28.3017	30.5719	29.2823
100237	1.8533	1.0002	31.7848	33.1536	33.9626	32.9302
100238	1.5461	0.8984	30.1094	31.4198	31.6353	31.0870
100239	1.3808	0.8984	28.6893	29.0650	30.3234	29.3640
100240	0.9605	0.9845	27.3523	29.7000	31.0951	29.4321
100242	1.5073	0.8616	25.6083	26.1988	27.8169	26.5493
100243	1.4693	0.8984	27.4534	28.3894	29.8323	28.5424
100244	1.4349	0.9483	26.6876	28.2881	29.8287	28.3038
100246	1.5436	0.9887	29.3310	30.1061	30.0467	29.8369
100248	1.5466	0.8984	28.8082	30.2133	32.4725	30.5169
100249	1.2891	0.8984	24.9876	26.4676	28.5117	26.7080
100252	1.1625	0.9722	27.8256	27.1639	29.1448	28.0425
100253	1.3885	1.0002	27.4927	28.7770	28.5617	28.3025
100254	1.4928	0.8963	26.1406	27.4900	28.5262	27.4003
100255	1.3022	0.8984	26.5571	27.3866	29.5172	27.8456
100256	1.7379	0.8984	30.3081	30.2093	33.3936	31.2439
100258	1.5584	1.0002	31.2203	33.8630	35.2225	33.4807
100259	1.2680	0.8984	27.4809	29.0612	29.9294	28.8451
100260	1.3817	0.9887	26.7129	28.2301	29.4907	28.1394
100264	1.4150	0.8984	26.8216	28.0370	30.1980	28.3184
100265	1.3281	0.8984	25.7432	26.3326	26.6940	26.2983
100266	1.3901	0.8616	23.0208	24.2517	25.6382	24.3561
100267	1.2820	0.9737	28.7259	28.9674	30.6051	29.4529
100268	1.1766	1.0002	29.0668	30.5750	33.6225	31.0686
100269	1.3704	1.0002	26.6047	27.8407	28.3745	27.6327
100271	2.0539	*	*	*	*	*
100275	1.3298	1.0002	26.8943	28.7797	31.0487	28.9936
100276	1.2885	1.0002	29.7606	30.5720	31.7067	30.6756
100277	1.5734	0.9845	20.4791	24.1122	25.5926	23.9913
100279	1.4035	0.9483	28.6383	29.2257	31.1951	29.7260
100281	1.3902	1.0002	29.6698	30.9131	32.8840	31.2138
100284	1.0583	0.9845	22.3134	25.2637	21.4420	22.7448
100285	1.2082	1.0002	*	41.9481	34.7999	39.4597
100286	1.5462	0.9801	28.3645	25.8085	26.5809	26.8131
100287	1.3877	1.0002	28.1051	29.7536	30.3085	29.3369
100288	1.7418	1.0002	28.7902	31.0506	32.9587	30.8738
100289	1.6220	1.0002	29.6376	31.9011	31.4727	31.0136

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
100290	1.2300	0.8954	27.1011	28.7111	29.7588	28.5289
100291	1.3426	0.9383	28.4722	28.1515	28.3780	28.3303
100292	1.3751	0.8616	26.7063	27.7644	28.5807	27.7208
100293	***	*	32.7963	*	*	32.7963
100294	***	*	30.7557	*	*	30.7557
100295	***	*	26.1983	*	*	26.1983
100296	1.3263	0.9845	*	29.3870	31.1475	30.2854
100297	***	*	*	32.1536	*	32.1536
100298	0.8531	0.8963	*	19.0297	21.9247	20.3578
100299	1.2918	0.9737	*	34.3697	31.6840	33.1830
100300	***	*	*	*	33.1693	33.1693
100302	1.1530	0.9166	*	*	*	*
110001	1.3715	0.8716	26.4338	26.5640	27.6480	26.8761
110002	1.3146	0.9739	26.4715	26.2228	28.9013	27.2277
110003	1.3138	0.7814	22.7066	24.2097	25.0089	23.9368
110004	1.3651	0.8847	24.9978	25.1846	27.2528	25.7800
110005	1.2920	0.9739	28.1209	27.2826	29.6009	28.4195
110006	1.5579	0.9118	28.3839	*	30.8495	29.6168
110007	1.5916	0.8737	26.6396	26.3133	28.0684	27.0197
110008	1.3577	0.9739	29.2947	30.9757	31.8387	30.6987
110010	2.1752	0.9739	31.7185	33.2396	33.9848	32.9916
110011	1.2817	0.9739	28.0598	28.5892	30.3534	29.0306
110015	1.0869	0.9739	28.1274	28.8796	30.5016	29.2483
110016	1.2538	0.8464	22.7263	24.3563	25.9209	24.3232
110018	1.1976	0.9739	26.8016	30.1849	30.9422	29.3019
110020	1.2967	0.9739	28.3822	27.5559	29.4641	28.5815
110023	1.3268	0.9739	29.8061	29.3282	29.2018	29.4303
110024	1.4707	0.8909	27.0225	27.3357	28.5660	27.6420
110025	1.4805	0.9860	31.0703	30.2845	31.8968	31.0858
110026	1.0932	0.7814	21.8018	22.8820	24.3863	23.0083
110027	1.0495	0.7814	22.6058	25.5291	25.6532	24.4935
110028	1.7419	0.9571	30.4641	31.4568	32.8706	31.5942
110029	1.7557	0.9739	27.3618	29.2134	30.1146	28.9199
110030	1.3848	0.9739	29.6841	29.9531	32.0275	30.6329
110031	1.2765	0.9739	27.1989	29.5533	30.7462	29.1995
110032	1.2552	0.7814	23.2586	25.1896	24.4968	24.3033
110033	1.7263	0.9739	30.3415	32.4178	32.7039	31.8564
110034	1.7754	0.9571	27.2338	28.7915	29.6819	28.5547
110035	1.7866	0.9739	28.9408	30.1852	31.5737	30.2760
110036	1.8232	0.8909	26.6664	27.2280	28.4041	27.4645
110038	1.5490	0.8365	22.2720	22.9685	23.3669	22.8673
110039	1.3715	0.9571	26.3503	26.2485	28.4376	26.8953
110040	1.1072	0.9739	20.9487	23.9526	21.5762	22.1591
110041	1.2065	0.9739	24.8864	26.1948	27.6609	26.2850
110042	1.0783	0.9739	34.9954	33.4391	34.5137	34.3032
110043	1.7595	0.8909	27.8477	28.8551	30.3728	28.9998
110044	1.2146	0.7814	23.3039	24.3772	27.0431	24.8932
110045	1.0312	0.9739	24.4275	27.7619	28.2232	26.7955
110046	1.1453	0.9739	26.7464	*	28.6286	27.6800
110050	1.0896	0.8529	27.5985	27.0651	27.1533	27.2629
110051	1.1237	0.7814	20.1756	21.4898	22.1491	21.3081
110054	1.4214	0.9739	28.9254	29.4691	31.5798	30.0230
110059	1.1551	0.7814	23.2137	24.7838	24.9271	24.3031
110064	1.5810	0.9028	24.1219	26.9363	28.7296	26.5866
110069	1.3423	0.9584	26.2085	29.9098	30.6465	28.9861
110071	1.1199	0.7814	21.3963	21.2041	23.6499	22.1662
110073	1.0249	0.7814	18.5753	23.3571	23.0072	21.5479
110074	1.4902	0.9118	27.9190	31.0062	29.0310	29.2540
110075	1.3139	0.8808	23.7585	24.8244	26.1089	24.8951
110076	1.4845	0.9739	28.7871	29.4344	31.0661	29.7184
110078	1.9453	0.9739	29.9625	30.5196	32.0516	30.8607
110079	1.5692	0.9739	26.8412	27.3274	29.0905	27.7231
110080	***	*	18.4714	*	*	18.4714
110082	1.9663	0.9739	30.8320	30.1072	31.1478	30.7001
110083	1.9542	0.9739	30.4287	34.0610	34.5798	33.0345
110086	1.2627	0.7814	21.6898	22.9959	23.4772	22.7091
110087	1.4277	0.9739	28.1633	31.0403	32.8029	30.7274
110089	1.1355	0.7814	23.9026	24.3327	26.0116	24.7684
110091	1.2908	0.9739	29.5337	27.0994	28.0637	28.1675
110092	1.1130	0.7814	20.8911	21.4168	22.8602	21.7050
110095	1.4589	0.8401	26.3075	28.0526	28.0480	27.4977
110100	0.9793	0.8604	16.2575	20.8201	20.0638	18.9184
110101	0.9836	0.7881	19.4257	21.0983	23.8601	21.3923
110104	1.2036	0.7814	20.3777	21.8966	22.2596	21.5752
110105	1.3710	0.7814	23.1405	23.4010	23.7752	23.4425
110107	1.9542	0.9779	28.9352	30.1027	31.5783	30.2379
110109	1.0208	0.7814	23.0376	21.6023	21.6019	22.0505
110111	1.1520	0.9571	25.1270	25.7084	27.6501	26.1364

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
110112	1.0402	0.8401	22.7672	26.4089	24.2935	24.5383
110113	0.9563	0.9571	21.3417	22.0793	22.0472	21.8310
110115	1.7770	0.9739	31.5074	32.7927	33.3902	32.5802
110121	1.0003	0.8365	26.2336	23.4571	24.5653	24.7830
110122	1.5417	0.8365	25.1934	25.4439	26.3071	25.6433
110124	1.0868	0.7814	22.9212	22.9571	24.8552	23.5887
110125	1.2583	0.9584	23.7834	24.7347	26.5006	24.9910
110128	1.2851	0.8808	25.7839	25.4190	24.5284	25.2133
110129	1.5763	0.9028	25.9625	30.0444	29.7332	28.5412
110130	0.9157	0.7814	19.1284	20.4349	21.7089	20.4156
110132	1.0336	0.7814	20.2502	21.2642	21.6039	21.0529
110135	1.2731	0.7814	22.5346	24.0945	25.1027	23.9472
110136	***	*	18.8212	*	*	18.8212
110142	0.9807	0.7999	21.3935	21.6286	22.2164	21.7487
110143	1.4244	0.9739	28.6583	29.9139	30.9621	29.8787
110146	1.0836	0.9075	27.0987	29.0193	30.1181	28.7425
110149	***	*	28.4040	*	*	28.4040
110150	1.2943	0.9739	25.3742	26.9884	27.7920	26.7265
110153	1.1212	0.9584	25.7467	29.3305	30.5108	28.4956
110161	1.5369	0.9739	30.4885	31.5001	32.0002	31.3396
110163	1.4478	0.8737	28.2169	27.7679	29.5693	28.5134
110164	1.7058	0.9779	28.8946	30.0145	31.2830	30.1120
110165	1.4341	0.9739	27.0977	28.7902	28.7925	28.2218
110168	1.7664	0.9739	28.5700	29.7774	30.8750	29.7609
110172	1.4736	0.9739	31.1234	31.3999	33.0452	31.8718
110177	1.9242	0.9571	28.8356	29.7079	30.5526	29.7267
110183	1.2878	0.9739	28.6208	28.3505	29.6622	28.9009
110184	1.2634	0.9739	28.3545	29.4071	30.2920	29.4140
110186	1.3154	0.9028	27.4925	28.2880	29.6503	28.4865
110187	1.2017	0.9739	25.2139	26.9638	31.0164	27.7900
110189	1.1025	0.9739	26.1418	26.2799	27.4207	26.6307
110190	1.0869	0.8055	23.3204	24.5224	29.4198	25.5710
110191	1.3287	0.9739	27.7760	30.9481	28.7505	29.1028
110192	1.4136	0.9739	28.8267	30.0843	31.6627	30.2570
110193	***	*	27.9161	*	*	27.9161
110194	0.8965	0.7814	19.1920	21.0826	20.5267	20.2840
110198	1.3548	0.9739	31.0557	32.8171	34.0050	32.6135
110200	2.0255	0.9028	24.9236	27.2974	29.4633	27.3158
110201	1.4529	0.9779	31.0841	32.0967	33.4292	32.2173

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
110203	0.9588	0.9739	29.7888	32.3441	32.0594	31.3303
110205	1.1762	0.8321	22.0207	23.9738	26.1973	24.0314
110209	0.6196	0.7814	21.1534	21.2428	22.4549	21.6330
110212	1.2056	0.8133	*	*	*	*
110214	***	*	37.1450	*	*	37.1450
110215	1.3584	0.9739	27.5566	29.5238	30.1793	29.1796
110219	1.3979	0.9739	28.8814	32.2603	33.4481	31.6162
110220	***	*	37.5741	*	*	37.5741
110221	***	*	28.0500	*	*	28.0500
110222	***	*	35.6189	*	*	35.6189
110223	***	*	*	25.3071	*	25.3071
110224	***	*	*	33.6464	*	33.6464
110225	1.2067	0.9739	*	29.5373	28.9773	29.2220
110226	1.1943	0.9739	*	*	32.1840	32.1840
110228	0.8800	0.9739	*	*	*	*
110229	1.2937	0.9739	*	*	*	*
110230	1.3799	0.7814	*	*	*	*
120001	1.7928	1.1549	34.1385	39.6348	39.0371	37.5748
120002	1.2441	1.1180	32.3784	34.1709	37.7287	34.7940
120004	1.2505	1.1549	30.0668	31.3555	32.5164	31.3610
120005	1.2956	1.1180	31.1985	33.6942	35.1996	33.3936
120006	1.2619	1.1549	31.6785	34.2231	35.7089	33.9096
120007	1.6337	1.1549	30.2473	30.8773	35.0193	31.9568
120010	1.9865	1.1549	29.5714	30.8526	34.3371	31.4361
120011	1.4896	1.1549	37.1792	39.1941	43.7527	40.2864
120014	1.3525	1.1180	30.3463	30.9839	34.2127	31.8849
120019	1.1704	1.1180	30.4257	33.0114	36.1879	33.2288
120022	1.8708	1.1549	29.9527	32.5326	34.9048	32.4619
120026	1.4182	1.1549	32.4566	34.2244	35.8413	34.2228
120027	1.3239	1.1549	28.7905	29.5825	31.8177	30.1249
120028	1.2578	1.1549	32.4847	34.0451	34.6354	33.7347
120029	***	*	*	44.6382	*	44.6382
130002	1.4061	0.9061	24.7871	24.7266	24.3501	24.6133
130003	1.4679	0.9524	28.6158	28.6136	29.8793	29.0080
130006	1.7567	0.9292	27.2158	28.0048	29.0504	28.1050
130007	1.7289	0.9292	28.7246	30.4958	31.2268	30.1210
130013	1.3627	0.9292	30.9609	36.1570	33.8928	33.6909
130014	1.2424	0.9292	27.2543	27.5936	28.2831	27.7163
130018	1.7532	0.9069	27.3439	28.4041	30.2047	28.6014

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
130024	1.2010	0.8243	23.6212	24.8035	25.3197	24.5769
130025	1.2294	0.7568	21.1998	22.7962	23.8592	22.6628
130028	1.4345	0.9069	27.2195	28.4934	29.3374	28.3741
130049	1.5625	1.0277	27.3597	29.0185	29.7211	28.7367
130062	***	*	25.6467	29.1925	28.3419	27.9025
130063	1.3989	0.9292	26.0955	27.7607	27.7697	27.1836
130065	1.9423	0.9069	21.9792	30.4547	25.8998	26.3105
130066	2.0536	0.9470	*	28.9883	28.1502	28.5238
130067	2.5439	*	*	21.3867	26.8285	23.8833
140001	1.1228	0.8767	22.3001	22.2003	23.2233	22.5899
140002	1.3470	0.8963	27.0165	27.4779	29.1097	27.9308
140007	1.4041	1.0275	30.7378	31.4024	32.4449	31.5559
140008	1.4398	1.0275	29.1767	31.8008	32.7618	31.2217
140010[3]	1.4990	1.0275	31.8806	40.1360	39.3727	36.3257
140B10[3]	***	*	*	40.1360	39.3727	39.7558
140011	1.2146	0.8398	23.8575	25.8864	26.2135	25.4087
140012	1.3111	1.0275	29.0336	31.8213	31.9613	30.8960
140013	1.4664	0.9121	23.9269	25.0951	26.4199	25.1256
140015	1.3514	0.8963	24.4687	24.6409	25.2504	24.8027
140018	1.3672	1.0275	26.3533	30.7398	31.5624	29.4472
140019	0.9137	0.8398	21.3438	22.3179	22.2907	21.9790
140026	1.1533	0.8713	25.9669	26.0493	28.1718	26.7527
140029	1.5833	1.0275	30.2688	36.7722	34.8938	33.9301
140030	1.5072	1.0275	30.2776	31.6822	32.1135	31.3508
140032	1.2665	0.8963	26.7310	27.5367	28.5242	27.6001
140033	***	*	27.9993	29.5256	31.4347	29.2000
140034	1.1691	0.8963	24.0470	24.4653	26.7250	25.0930
140040	1.2231	0.9121	23.2293	24.5589	28.5016	25.3382
140043	1.2633	0.8570	27.3469	29.8633	31.3754	29.6000
140046	1.4718	0.8963	24.7334	25.6230	25.7925	25.3941
140048	1.2747	1.0275	29.3877	30.6686	31.6290	30.5714
140049	1.5341	1.0275	29.0976	30.8617	32.0239	30.6563
140051	1.5614	1.0275	30.9696	32.1730	32.6517	31.9427
140052	1.3427	0.8963	25.9617	26.9907	26.7916	26.5765
140053	1.7864	0.9099	27.4518	28.4513	29.9487	28.5962
140054	1.4853	1.0275	33.1406	34.2378	34.5369	33.9743
140058	1.2393	0.8963	24.6058	25.2568	26.5671	25.4979
140059	1.0671	0.8963	22.6743	21.6230	22.8597	22.3767
140062	1.3723	1.0275	34.1230	36.8271	36.6718	35.8665
140063	1.4112	1.0275	28.6559	30.5465	31.1266	30.0987
140064	1.2182	0.9121	23.8639	25.7551	26.6249	25.4626
140065	1.4145	1.0275	30.1856	31.5510	32.4661	31.3620
140066	1.1146	0.8963	22.1524	22.0225	23.6304	22.6006
140067	1.8116	0.9121	28.3506	29.8982	30.6911	29.6696
140068	1.2320	1.0275	28.3938	26.7166	31.3463	28.7638
140075	1.2699	1.0275	26.2626	35.9507	33.6872	31.5479
140077	0.9384	0.8963	20.3999	21.6468	22.5074	21.5542
140080	1.4274	1.0275	28.8791	29.9067	30.3788	29.7144
140082	1.6345	1.0275	28.3429	31.0516	32.0562	30.4278
140083	0.9703	1.0275	26.8919	27.2189	26.1639	26.6859
140084	1.2688	1.0357	30.5036	30.7251	31.3307	30.8606
140088	1.8616	1.0275	30.5450	32.6866	34.4137	32.6399
140089	1.2293	0.8398	24.1066	24.9120	26.6955	25.2545
140091	1.7544	0.9386	27.8536	28.2095	29.7381	28.6287
140093	1.2249	0.9675	28.3298	28.6709	31.2973	29.5317
140094	1.0568	1.0275	27.3841	28.7647	28.8621	28.3332
140095	1.2062	1.0275	28.7617	29.7385	29.9626	29.4672
140100	1.4164	1.0357	41.3374	37.2961	37.3044	38.5947
140101	1.2745	1.0275	29.4081	28.9723	31.0070	29.8045
140103	1.1915	1.0275	23.6406	24.0926	25.3630	24.3950
140105	***	*	29.5274	29.6590	30.7154	29.8408
140110	1.1357	1.0275	28.6364	30.3432	31.3486	30.1332
140113	1.5834	0.9386	29.5452	30.2542	31.6191	30.5044
140114	1.5009	1.0275	28.2151	29.8316	31.1412	29.7624
140115	1.2617	1.0275	26.0383	25.4576	26.2606	25.9070
140116	1.3663	1.0289	34.5537	34.3876	34.2519	34.3948
140117	1.5087	1.0275	27.7201	30.9679	28.5809	29.0537
140118	1.4569	1.0275	32.5518	33.1987	33.8168	33.1845
140119	1.8092	1.0275	34.2118	32.2185	34.6543	33.6436
140120	1.3092	0.9121	23.9724	25.9275	26.2418	25.4013
140122	1.5060	1.0275	30.5653	30.2888	32.4750	31.1102
140124	1.2519	1.0275	35.7563	38.2191	38.8976	37.6297
140125	1.1586	0.8963	22.7571	26.5801	27.6352	25.6700
140127	1.6268	0.9485	25.6668	27.8363	29.3352	27.6421
140130	1.2281	1.0357	32.6209	32.5425	34.9907	33.3763
140133	1.4043	1.0275	31.0269	30.3259	32.8941	31.4197
140135	1.4195	0.8850	23.3196	24.6645	25.9057	24.6643
140137	1.0555	0.8963	23.4174	31.4349	*	26.5232

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
140143	1.1810	1.0275	27.4499	26.1126	27.0312	26.8360
140145	1.0936	0.8963	26.0875	25.2040	26.9344	26.0855
140147	1.0807	0.8398	21.0686	21.1817	22.1035	21.4537
140148	1.6367	0.9099	25.5677	27.0038	28.9471	27.2142
140150	1.6415	1.0275	52.0970	35.5951	39.0316	41.9868
140151	0.8009	1.0275	27.0312	26.0825	27.3552	26.8317
140152	***	*	30.2209	29.8647	32.2803	30.7794
140155	1.3171	1.0390	29.5734	32.7960	35.0825	32.3966
140158	1.3557	1.0275	27.3721	30.4445	32.0137	30.0264
140160	1.1752	0.9721	25.8684	27.6905	28.9043	27.4939
140161	1.1449	0.8566	25.2898	28.8266	28.8150	27.6828
140162	1.5508	0.9485	29.4121	32.1810	33.0995	31.5175
140164	1.7457	0.8963	24.6009	25.9726	27.3133	26.0027
140166	1.1833	0.8398	26.4800	26.2875	27.6725	26.8375
140167	1.1520	0.8398	22.8703	24.9904	24.2749	24.0641
140172	1.3869	1.0275	32.1220	33.0926	33.4616	32.9116
140174	1.5866	1.0275	30.5905	31.2231	33.9382	31.9696
140176	1.2304	1.0289	32.9794	32.6145	33.2235	32.9416
140177	0.9826	1.0275	26.4340	25.5725	26.0727	26.0355
140179	1.3093	1.0275	29.3657	30.2944	31.3624	30.3158
140180	1.1865	1.0275	27.8887	29.1352	29.8009	28.9370
140181	1.1553	1.0275	25.0226	27.6835	27.5414	26.7417
140182	1.4699	1.0275	30.1755	32.8972	26.4103	29.5353
140184	1.3083	0.8398	25.2327	26.6104	27.5858	26.4850
140185	1.4353	0.8963	25.2423	26.5398	27.9433	26.5578
140186	1.4996	1.0390	29.8022	30.7212	32.8063	31.1269
140187	1.5066	0.8963	24.8332	25.5873	26.9265	25.7708
140189	1.1613	0.8398	22.5965	24.7013	29.1371	25.4817
140191	1.3260	1.0275	28.5836	31.9943	29.7684	30.0533
140197	1.0750	1.0275	24.0463	24.9103	24.8715	24.5948
140200	1.5127	1.0275	28.8435	30.6641	31.3712	30.2730
140202	1.4540	1.0357	32.7915	32.9433	34.3789	33.4146
140206	1.2003	1.0275	29.7953	29.6275	31.1406	30.1681
140207	1.1263	1.0275	26.0535	28.2262	31.6818	28.4333
140208	1.6431	1.0275	29.5380	31.4035	26.1749	28.8267
140209	1.5745	0.9121	26.3230	29.7965	28.8774	28.2742
140210	1.0666	0.8398	20.6954	19.2053	22.2512	20.7152
140211	1.3335	1.0275	30.3286	31.4539	34.5917	32.1855
140213	1.2461	1.0275	31.6926	32.1031	33.3932	32.4256
140217	1.4730	1.0275	32.1277	32.9404	33.2172	32.8062
140223	1.4984	1.0275	31.7267	33.5083	34.6997	33.3198
140224	1.3772	1.0275	29.6181	31.2237	30.2241	30.3481
140228	1.4746	0.9825	27.9456	28.2855	28.7462	28.3358
140231	1.4725	1.0275	30.0236	34.8291	35.6724	33.5077
140233	1.6727	0.9825	29.7093	31.5168	32.3376	31.1992
140234	1.0941	0.8713	24.5476	25.7353	25.7660	25.3484
140239	1.5138	0.9825	31.1879	31.0918	33.7264	31.9847
140240	1.4530	1.0275	31.5637	32.7986	28.0986	30.7327
140242	1.5130	1.0275	34.6120	35.2351	36.8032	35.5022
140250	1.2465	1.0275	29.6305	31.2533	32.9414	31.3015
140251	1.3766	1.0275	28.0622	28.3598	29.5941	28.6558
140252	1.4508	1.0275	34.4268	35.8762	36.1531	35.4963
140258	1.5542	1.0275	34.2333	33.0093	34.5696	33.9319
140275	1.3642	0.8570	27.8186	28.5064	26.7394	27.6734
140276	1.9215	1.0275	31.6359	32.1048	32.7073	32.1545
140280	1.4886	0.8570	24.9401	26.6536	26.9835	26.2020
140281	1.7880	1.0275	33.3903	35.6589	37.5700	35.5878
140286	1.2075	1.0275	30.3237	32.0048	32.2246	31.5113
140288	1.4837	1.0275	31.5197	31.5944	32.5472	31.8990
140289	1.2847	0.8963	23.8452	25.6847	26.0872	25.2082
140290	1.3714	1.0275	31.8135	32.5247	35.9679	33.4777
140291	1.5220	1.0357	31.9052	33.8706	32.7884	32.8714
140292	1.1459	1.0275	28.5094	30.6917	32.4496	30.3858
140294	1.1034	0.8398	24.0750	26.1595	26.9789	25.8215
140300	1.1732	1.0275	35.1494	42.5240	37.4508	38.3125
140301	1.0845	1.0275	49.9507	39.4295	35.9742	39.8412
140303	2.1297	1.0275	29.6470	*	33.0359	31.1914
150001	1.1884	0.9783	28.9075	31.8089	32.9804	31.2750
150002	1.4759	1.0274	26.6222	27.6481	28.1076	27.6114
150003	1.5882	0.9020	26.7585	26.9771	29.3660	27.7063
150004	1.4564	1.0274	28.7336	30.9626	31.7867	30.4279
150005	1.2653	0.9783	29.5371	30.5367	31.6090	30.6065
150006	1.3689	0.9396	25.6265	27.1364	28.3403	27.0723
150007	1.4560	0.9225	29.4971	30.0500	31.0384	30.2276
150008	1.4469	1.0274	27.5703	27.0525	29.1492	27.9340
150009	1.4391	0.9209	25.4496	25.7616	26.1517	25.7897
150010	1.5190	0.9225	27.2272	28.4118	28.2616	27.9492
150011	1.3297	0.9661	25.3178	26.7686	27.7870	26.5789

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
150012	1.5520	0.9783	30.0348	31.2282	31.6762	30.9816
150015	1.3611	0.9267	28.0931	27.3811	30.2516	28.5409
150017	1.8252	0.8975	26.3973	26.3379	27.1262	26.6393
150018	1.5942	0.9525	27.3689	29.1137	30.0928	28.9177
150021	1.8110	0.8975	28.9196	30.0030	31.1158	30.0148
150022	1.0596	0.8623	23.1041	23.8971	26.9525	24.4677
150023	1.5867	0.9661	26.9095	27.7520	30.3667	28.3774
150024	1.4755	0.9783	28.1655	28.4170	30.6154	29.0371
150026	1.3503	0.9525	28.6517	30.4967	31.9397	30.4519
150029	1.3425	0.9783	28.7187	29.9307	31.0692	29.8988
150030	1.1959	0.9661	29.1493	29.3588	31.1986	29.9394
150033	1.4212	0.9783	28.6838	29.7744	32.9469	30.4553
150034	1.4618	1.0274	28.6429	28.0434	30.0048	28.9364
150035	1.5502	1.0274	26.9700	27.8904	29.2039	28.0382
150037	1.2514	0.9783	31.0935	29.0161	30.4640	30.1396
150038	1.1399	0.9783	29.3156	33.0112	31.9552	31.4561
150042	1.3652	0.8763	22.8786	25.1403	25.2456	24.4079
150044	1.4482	0.9209	25.2137	25.2685	25.9284	25.4839
150045	1.0425	0.8975	26.9818	27.5340	29.4323	27.9976
150046	1.5573	0.9103	24.5593	26.5876	27.6228	26.2773
150047	1.7072	0.8975	25.5194	25.8497	27.1847	26.1908
150048	1.4413	0.9560	27.1233	28.1525	29.5588	28.3259
150051	1.6097	0.9661	26.5655	28.9157	30.3764	28.6844
150056	1.9806	0.9783	28.8727	29.3500	30.5777	29.6158
150057	2.0626	0.9783	28.9529	30.3287	29.2358	29.4882
150058	1.6337	0.9783	29.1444	29.1255	31.7558	30.0008
150059	1.4852	0.9783	31.4987	31.3362	36.2570	33.0492
150061	1.1293	0.8465	21.3711	22.6746	23.2427	22.4418
150064	1.2387	0.8465	25.4987	28.7978	28.9430	27.8443
150065	1.2483	0.9661	27.9283	30.2053	30.7970	29.6518
150069	1.1836	0.9560	26.2028	26.0909	27.0740	26.4657
150072	1.1293	0.8570	21.2120	21.7644	23.0619	21.9965
150074	1.4310	0.9783	25.9321	28.5655	29.4135	28.0124
150075	1.1395	0.8975	25.1568	25.7245	26.5987	25.8600
150076	1.2977	0.9396	29.3249	30.1120	30.2972	29.9143
150082	1.5904	0.8498	28.3494	26.4544	28.1302	27.6232
150084	1.8338	0.9783	31.1720	33.1784	35.0288	33.1062
150086	1.2212	0.9560	25.1992	26.6745	27.2580	26.4093
150088	1.2977	0.9661	27.2103	29.1509	30.2396	28.8861
150089	1.5575	0.8465	24.7233	24.8045	26.7290	25.4207
150090	1.5593	1.0274	30.4835	30.6412	30.9274	30.6937
150091	1.1567	0.8975	30.4234	32.1627	33.0421	31.9037
150097	1.1850	0.9783	27.7468	29.1359	29.4797	28.7954
150100	1.6034	0.8498	25.7997	26.9724	27.6339	26.7729
150101	1.0829	0.8975	29.0301	30.5475	31.6031	30.3784
150102	1.0260	0.9267	25.7424	25.8742	25.4717	25.6897
150104	1.1438	0.9783	28.2552	28.7788	30.8984	29.3105
150109	1.5468	0.9020	25.3367	26.8464	29.0076	27.0816
150112	1.4962	0.9828	28.0068	29.8540	31.7966	29.8988
150113	1.2114	0.9661	24.7960	25.9814	26.9098	25.9100
150115	1.3473	0.8465	22.0747	22.5793	22.3571	22.3411
150125	1.5492	1.0274	27.6535	29.3596	30.7113	29.2613
150126	1.3476	1.0274	28.9454	29.4300	32.6488	30.2651
150128	1.4328	0.9783	28.7810	29.5008	31.1071	29.8299
150129	1.1901	0.9783	29.7398	31.4317	32.9629	31.3712
150132	***	*	27.6560	*	*	27.6560
150133	1.2140	0.9396	25.1322	24.2538	23.0662	24.1079
150134	***	*	26.3249	21.6740	27.3983	24.7459
150146	1.1276	0.9525	29.5256	30.3343	31.8757	30.6320
150147	1.4431	1.0274	27.2339	26.1646	28.9269	27.6254
150149	0.9329	0.8498	23.7026	24.9629	25.3350	24.7408
150150	1.3579	0.8975	27.0542	26.7700	26.5984	26.7816
150153	2.3058	0.9783	32.1022	35.0617	37.3948	35.1897
150154	2.4806	0.9783	29.8514	29.8894	30.5775	30.1316
150155	***	*	45.0121	*	*	45.0121
150156	***	*	25.9681	*	*	25.9681
150157	1.7731	0.9783	*	32.3106	32.9167	32.6162
150158	1.2486	0.9783	*	*	30.4355	30.4355
150159	***	*	*	*	27.5595	27.5595
150160	2.0990	0.9783	*	*	27.6375	27.6375
150161	1.6042	0.9783	*	*	*	*
150162	1.8247	0.9783	*	*	*	*
150163	1.0092	0.9209	*	*	*	*
150164	1.1307	0.9390	*	*	*	*
150165	1.3493	0.9267	*	*	*	*
150166	1.0888	0.9267	*	*	*	*
160001	1.2025	0.8954	24.5108	25.7255	25.8686	25.3907
160005	1.2223	0.8954	23.1034	24.7755	24.8597	24.2782

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
160008	1.0519	0.8954	22.1402	22.4758	24.1282	22.9097
160013	1.1825	0.9133	24.0956	24.4099	25.5162	24.6771
160016	1.5611	0.8954	24.5338	27.1460	26.6537	26.0791
160024	1.5067	0.9442	27.4158	29.3756	32.4253	29.7125
160028	1.3531	0.9329	27.8535	30.0576	29.8343	29.2984
160029	1.5288	0.9319	28.7324	30.6687	32.2035	30.5414
160030	1.4488	0.9412	28.7786	30.9415	30.4779	30.0908
160032	1.0814	0.9189	25.4662	26.2935	28.5645	26.7839
160033	1.6106	0.8954	26.5315	27.2060	27.4810	27.0643
160040	1.3587	0.8954	25.9032	26.8110	28.2982	27.0159
160045	1.6649	0.8954	26.6463	27.5289	28.1681	27.4627
160047	1.3431	0.9329	26.0227	28.1280	29.4286	27.7507
160057	1.3695	0.9089	25.1272	25.6274	27.7969	26.2001
160058	1.9938	0.9319	28.4167	28.9924	29.8975	29.1110
160064	1.5604	1.0364	28.7668	28.4209	33.6082	30.2009
160067	1.3963	0.8954	24.8137	26.0243	26.7679	25.8724
160069	1.5112	0.8954	27.4473	27.6157	28.4081	27.8037
160079	1.4501	0.8954	24.7372	26.1618	28.5034	26.4598
160080	1.2263	0.9020	25.8252	27.2370	27.8745	26.9723
160082	1.7394	0.9442	27.4718	28.7831	31.7508	29.3436
160083	1.6295	0.9442	27.3004	28.3921	29.9489	28.5565
160089	1.2119	0.9089	23.2149	23.2888	23.9194	23.4750
160101	1.1057	0.9442	25.0503	25.4740	26.8515	25.8123
160104	1.6333	0.8954	28.1891	29.8126	27.0538	28.2569
160110	1.4990	0.8954	26.6633	28.8134	29.9094	28.6051
160112	1.2359	0.8954	24.7957	25.2886	26.1721	25.4493
160117	1.3734	0.8954	25.4659	27.3927	24.3326	25.6603
160122	1.1373	0.8954	23.9177	24.4996	25.3192	24.5894
160124	1.1221	0.8954	22.5482	24.3063	25.5048	24.1105
160146	1.4316	0.8954	22.6949	24.8485	25.1834	24.2141
160147	1.2241	0.8954	28.6303	29.8992	33.6394	30.7350
160153	1.6978	0.8954	29.9378	30.6173	30.4356	30.3305
160155	2.0066	0.8954	*	*	*	*
170001	1.1236	0.8055	23.1260	23.8863	24.5942	23.8769
170006	1.3205	0.9316	24.2068	27.1033	28.3527	26.6141
170009	1.0808	0.9423	30.9025	29.6386	32.2847	30.9542
170010	1.2332	0.8055	23.9707	25.5573	28.1802	25.9461
170012	1.6277	0.8753	26.1367	27.1195	28.7878	27.3264
170013	1.7183	0.8753	25.2476	26.7124	28.3051	26.7047
170014	1.0378	0.9423	23.8135	24.2322	25.8165	24.6251
170016	1.5885	0.8840	25.8061	26.7536	28.6817	27.0798
170017	1.1351	0.8947	26.9657	27.2925	29.1463	27.8536
170020	1.5638	0.8753	23.2757	24.1149	25.0561	24.1610
170023	1.4630	0.8753	24.0561	23.9812	24.8827	24.3280
170027	1.4374	0.8055	23.1766	23.4037	24.1133	23.5726
170033	1.3305	0.8055	21.9709	24.1882	25.0404	23.6613
170039	0.9400	0.8947	26.9852	26.0952	23.5975	25.4107
170040	1.9354	0.9423	28.4458	30.2468	30.0828	29.6668
170049	1.5128	0.9423	25.2070	26.4086	31.8595	27.9192
170058	1.1008	0.8055	22.9210	26.5949	28.1330	25.7974
170068	1.2120	0.8852	23.0635	23.8812	23.8509	23.5917
170074	1.1966	0.8055	23.7829	23.0567	24.8871	23.9150
170075	0.8435	0.8055	19.7760	19.9351	21.1965	20.2947
170086	1.5729	0.8840	26.1362	26.3615	28.5260	27.0446
170094	0.9218	0.8055	21.5295	16.5136	17.1719	18.5441
170103	1.2783	0.8947	23.8042	24.2003	25.5671	24.5534
170104	1.4061	0.9423	26.2990	27.6211	29.7793	27.8984
170105	1.1104	0.8055	21.9606	22.7412	23.4332	22.7179
170109	1.0346	0.9423	23.1088	23.8515	29.0197	25.4507
170110	0.8940	0.8055	23.3260	23.9572	24.7927	24.0236
170114	0.5755	*	*	*	*	*
170120	1.3717	0.9316	22.0253	22.2805	23.5287	22.6065
170122	1.6977	0.8947	26.6605	28.7175	29.6337	28.2850
170123	1.6705	0.8947	27.6653	27.0843	28.7627	27.8485
170133	1.0199	0.9423	23.1226	25.2301	25.7129	24.7253
170137	1.3251	0.8055	24.7096	25.3395	26.8029	25.6449
170142	1.3705	0.8688	23.9527	24.6019	25.5567	24.7033
170145	1.0864	0.8055	23.2162	23.3967	25.3745	23.9858
170146	1.5000	0.9423	29.8858	29.0720	31.7023	30.2206
170147	***	*	22.4973	24.3268	21.4581	23.0048
170150	1.1416	0.8221	20.9448	19.6160	22.0265	20.8658
170166	1.0164	0.8055	21.0762	22.6968	24.1079	22.6644
170175	1.4821	0.8753	25.6281	26.7229	31.7600	28.0197
170176	1.5683	0.9423	27.2332	29.0735	30.1135	28.8502
170180	***	*	32.5010	*	*	32.5010
170182	1.4513	0.9423	27.3503	28.9710	30.3805	28.8979
170183	1.9858	0.8947	25.8340	26.1890	27.7207	26.5693
170185	1.2551	0.9423	27.8139	28.1780	29.3226	28.5084

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
170186	2.5215	0.8947	32.8392	30.2613	30.7673	31.2802
170187	1.6421	0.8055	22.8493	24.1461	24.6419	23.8943
170188	1.9849	0.9423	30.6844	32.2573	33.7247	32.2687
170190	1.0158	0.8688	22.9540	26.2625	27.3041	25.5432
170191	1.8259	0.8055	22.1197	24.3813	26.0305	24.3257
170192	1.7633	0.8947	26.2724	27.7421	30.9230	28.4752
170193	1.3485	0.8753	20.6821	24.8531	24.4131	22.9316
170194	1.2298	0.9423	29.9014	27.6989	28.2004	28.5260
170195	2.4249	0.9423	30.1001	29.5947	29.1787	29.5501
170196	2.4626	0.8947	*	32.1832	29.9671	30.9618
170197	2.3264	0.8947	*	*	*	*
170198	1.9320	0.8055	*	*	*	*
180001	1.3075	0.9561	27.6917	29.7423	29.9674	29.1418
180002	1.0681	0.8032	25.7862	26.5488	27.3344	26.5498
180004	1.0771	0.7899	22.0797	20.8805	22.0626	21.6725
180005	1.1489	0.8734	24.9779	25.6159	27.4317	26.0710
180007	1.5447	0.8917	25.7042	27.1924	26.9440	26.6131
180009	1.7523	0.9093	26.4101	27.3228	28.7048	27.5590
180010	1.8284	0.8917	25.6153	27.7600	28.2168	27.1711
180011	1.6299	0.8723	25.5463	24.9909	25.0372	25.1739
180012	1.4747	0.9089	25.6000	26.7279	27.2851	26.5359
180013	1.5054	0.9241	23.7075	24.8125	26.8108	25.0989
180016	1.2929	0.9210	24.8408	24.7091	26.9539	25.4649
180017	1.3108	0.8200	21.8885	21.9715	25.4174	23.1030
180018	1.3550	0.7899	20.9857	23.3035	24.9874	23.1020
180019	1.1159	0.7899	24.0283	24.6279	27.6801	25.4956
180020	1.0619	0.7899	24.6953	25.9975	26.8865	25.8900
180021	0.9617	0.7899	20.7950	22.0740	22.3768	21.7650
180024	1.1593	0.9089	31.1159	26.3532	26.9553	28.0403
180025	1.2349	0.9210	22.6897	28.5935	28.4172	26.7274
180027	1.2008	0.8271	20.8303	21.7639	23.3881	21.9097
180029	1.4658	0.8723	25.6479	26.1528	26.3907	26.0665
180035	1.4800	0.9561	31.0794	32.8461	34.0370	32.7274
180036	1.3333	0.9093	25.2972	25.6959	30.2643	27.0565
180037	***	*	26.3132	27.8506	33.1897	29.1439
180038	1.5430	0.7899	26.0440	26.9752	28.2430	27.1334
180040	1.8321	0.9210	27.9979	28.5162	30.2471	28.9057
180043	1.1739	0.7947	20.9326	20.6439	24.0582	21.9178
180044	1.6003	0.8734	24.4569	25.8060	25.7990	25.3780
180045	1.3322	0.9561	27.4732	29.4127	29.9366	28.9847
180046	1.0037	0.8917	27.1034	27.0962	28.5568	27.5852
180048	1.3530	0.9089	23.9230	24.3696	24.6800	24.3400
180049	1.4061	0.8723	22.4769	24.3699	23.5756	23.4737
180050	1.1304	0.7899	26.3604	25.9557	26.7726	26.3679
180051	1.2265	0.8271	23.5299	24.3916	25.2369	24.4161
180053	0.9913	0.7899	21.3044	22.1921	23.0302	22.2295
180056	1.1344	0.8499	24.3074	24.5326	26.3973	25.0684
180064	1.2217	0.8213	17.1009	20.1799	21.9517	19.7365
180066	1.1075	0.9241	22.2713	23.7860	24.9542	23.6736
180067	1.9564	0.8917	26.0238	27.9852	29.6053	27.9911
180069	1.0930	0.8734	26.3701	26.6714	27.6785	26.8872
180070	1.1927	0.8139	20.6741	20.2189	21.3707	20.7662
180078	1.0606	0.8734	27.6806	28.2762	29.2136	28.3870
180079	1.1480	0.8158	20.2100	23.6005	24.9911	22.8634
180080	1.2670	0.7899	21.5818	23.7788	25.3013	23.5878
180087	1.2279	0.7899	20.8841	22.0302	22.1063	21.6774
180088	1.7064	0.9210	28.0916	28.6107	30.7954	29.1750
180092	1.1672	0.8917	23.7909	23.7866	25.2900	24.3108
180093	1.6156	0.8100	20.5807	21.4392	22.3330	21.4598
180095	1.0121	0.7899	17.9146	21.5639	21.2162	20.0753
180101	1.3165	0.8917	27.4506	28.1621	28.8772	28.2018
180102	1.5022	0.8271	21.0896	25.2343	27.3901	24.3947
180103	2.0478	0.8917	28.4583	28.1734	29.7648	28.8052
180104	1.5660	0.8271	25.6157	25.9689	27.1292	26.2421
180105	0.9512	0.7899	21.6002	23.1917	24.3663	23.0872
180106	0.8902	0.7899	20.2884	20.7220	21.2271	20.7449
180115	0.9051	0.7899	20.5539	20.3089	22.7095	21.1836
180116	1.1820	0.8398	23.5354	25.8927	26.8850	25.4596
180117	0.9402	0.7899	22.8469	24.7378	24.9571	24.2083
180124	1.3256	0.9241	24.8292	25.4664	27.1359	25.8369
180127	1.3575	0.9089	24.6774	26.3947	28.3635	26.4562
180128	0.9391	0.7899	22.6056	23.8144	23.7778	23.4112
180130	1.6732	0.9210	27.8900	29.1712	29.6751	28.9409
180132	1.4341	0.8723	24.5105	25.3789	29.0563	26.3811
180138	1.1857	0.9210	28.1901	28.6871	29.2603	28.7294
180139	1.0073	0.7899	23.3569	24.7575	26.2450	24.7768
180141	1.8613	0.9210	25.3357	27.5912	28.7329	27.2564
180143	1.6811	0.8917	28.1924	30.8734	28.0780	29.0041

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
180144	***	*	29.5052	*	*	29.5052
180147	***	*	*	31.1615	*	31.1615
180148	***	*	*	30.1250	*	30.1250
180149	1.0084	0.7899	*	*	16.4918	16.4918
180150	1.8775	0.9210	*	*	*	*
180151	1.3627	0.8917	*	*	*	*
190001	1.0948	0.7656	22.1394	22.1569	22.5331	22.2812
190002	1.5741	0.8422	23.3368	24.6984	25.9387	24.6305
190003	1.4185	0.8422	25.8294	26.7844	28.0899	26.9254
190004	1.5110	0.7844	25.3473	25.0803	24.6563	25.0238
190005	1.5206	0.8953	22.6029	24.2899	28.3308	24.2844
190006	1.2936	0.8422	22.7979	24.8836	25.4826	24.4555
190007	1.1750	0.7656	21.8205	23.1426	24.0538	23.0459
190008	1.7436	0.7844	24.6074	26.3638	27.2683	26.0093
190009	1.3575	0.8095	21.1005	24.0696	25.0269	23.3882
190011	1.0079	0.7935	21.4052	21.6991	21.9174	21.6831
190013	1.5556	0.7656	21.4573	23.7333	22.8380	22.6702
190014	1.2320	0.7656	22.7151	22.6405	24.5410	23.2760
190015	1.3066	0.8953	23.7789	25.1767	26.9591	25.3342
190017	1.4844	0.8422	24.5390	24.7537	25.5477	24.9737
190019	1.7235	0.8095	24.0468	25.4624	27.6057	25.7465
190020	1.2828	0.8131	22.1967	23.4602	24.2361	23.3370
190025	1.3355	0.7656	23.5007	24.5024	26.5949	24.8093
190026	1.6123	0.8095	23.7702	24.1556	25.3752	24.4577
190027	1.6315	0.7656	24.3006	26.7132	31.5047	27.4181
190034	1.2084	0.7845	20.7334	21.2130	22.9920	21.6119
190036	1.6678	0.8953	25.4164	25.6551	29.1818	26.6083
190037	***	*	19.4071	20.7271	28.0463	21.7542
190039	1.5110	0.8953	24.4386	25.4003	24.6848	24.8470
190040	1.4200	0.8953	28.6297	28.0169	28.2444	28.2876
190041	1.4656	0.8519	28.5376	28.0050	28.7702	28.4381
190044	1.2886	0.7917	20.9993	21.2604	22.2462	21.5124
190045	1.5426	0.8953	25.8238	27.1996	27.5873	26.9051
190046	1.4309	0.8953	23.8552	24.7370	25.1890	24.5974
190050	1.1479	0.7700	21.0259	20.9142	22.7962	21.5831
190053	1.2079	0.7757	17.9788	18.5819	20.6289	19.0434
190054	1.3247	0.7741	23.1471	22.7011	23.5137	23.1221
190060	1.4713	0.7656	23.7393	22.6291	19.8911	21.9233
190064	1.6130	0.8131	23.1358	23.7298	26.9960	24.6376
190065	1.5896	0.8131	22.1880	23.1202	22.9861	22.7754
190078	1.0906	0.7843	22.2431	22.2346	25.6943	23.4397
190079	1.1825	0.8953	24.0985	23.8192	25.3344	24.4478
190081	0.8736	0.7656	20.0121	21.4510	20.4111	20.6032
190086	1.2753	0.7758	22.0610	22.2895	22.2852	22.2156
190088	1.1378	0.8519	23.8562	23.1638	24.7450	23.9124
190090	1.0333	0.7656	23.1241	24.3303	25.8610	24.3673
190098	1.7670	0.8519	25.6854	25.7449	27.5058	26.3131
190099	1.0154	0.7845	22.0610	23.2343	25.7488	23.6616
190102	1.5407	0.8422	27.3126	26.9700	28.3090	27.5016
190106	1.1418	0.8095	23.5376	26.6227	24.2759	24.7511
190111	1.6311	0.8519	25.5729	26.5722	27.3192	26.5048
190114	1.0611	0.7656	17.2678	19.1586	20.3651	18.9139
190115	1.2209	0.8519	28.2066	26.0797	26.0285	26.7729
190116	1.1895	0.7741	22.3710	23.4013	24.2154	23.3424
190118	0.9845	0.8519	22.8809	21.2580	22.6572	22.2425
190122	1.4107	0.8131	22.0072	22.2371	22.8681	22.4044
190124	***	*	26.0032	27.9484	28.6713	27.4844
190125	1.5709	0.7935	25.5463	24.8256	26.6269	25.6722
190128	1.0271	0.8131	28.3257	29.6682	31.1819	29.7866
190131	1.3321	0.8131	27.8465	28.6795	28.5946	28.3739
190133	0.9162	0.7758	18.2045	22.4311	23.9550	22.0668
190135	1.6174	0.8953	27.7540	30.5646	35.0547	30.2949
190140	0.9875	0.7691	18.9652	23.0485	23.6713	21.8179
190144	1.2674	0.8519	22.9181	23.7875	24.8866	23.8767
190145	0.9756	0.7746	19.9265	20.8579	21.3988	20.7223
190146	1.5590	0.8953	27.4824	28.7200	28.5984	28.2733
190151	0.9259	0.7656	18.7467	18.8391	20.6970	19.4063
190152	1.1740	0.8953	28.1334	30.8512	34.6508	30.9978
190158	***	*	26.4787	30.6450	21.5594	27.6931
190160	1.5643	0.7935	22.9325	24.7822	25.8646	24.4465
190161	1.0303	0.7656	22.6187	22.9035	23.8073	23.1215
190162	***	*	25.2953	*	*	25.2953
190164	1.1306	0.8123	25.2560	26.6207	27.7265	26.5861
190167	1.2777	0.8422	26.4669	25.3283	27.1981	26.3229
190175	1.2778	0.8953	26.0547	27.4256	30.5948	28.0073
190176	1.7861	0.8953	25.8826	26.2596	28.2192	26.7835
190177	1.6455	0.8953	27.7792	28.2751	29.7252	28.5976
190182	***	*	27.1682	29.8656	30.7058	29.2924

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
190183	1.2349	0.7844	22.6928	22.0119	23.3462	22.7042
190184	0.9601	0.7758	24.9476	24.1626	22.6144	23.9163
190185	***	*	25.6394	28.9759	36.7317	29.7372
190190	0.9247	0.7731	24.3327	26.7043	27.5051	26.1459
190191	1.3759	0.8422	24.1923	26.1628	26.9656	25.7638
190196	0.9613	0.8422	24.0385	25.8472	27.7824	25.9549
190197	***	*	25.8071	26.4825	28.7044	26.9787
190199	1.0984	0.8131	27.3304	32.0194	36.7128	31.6425
190200	***	*	28.8173	27.4781	*	28.3200
190201	1.3046	0.7656	25.1010	24.4563	26.8550	25.4872
190202	1.5213	0.8131	27.6084	29.6612	27.6463	28.2724
190203	***	*	28.1832	29.9753	*	29.0343
190204	1.4425	0.8953	28.1033	30.5140	32.9140	30.3818
190205	1.6698	0.8422	26.6832	28.2484	30.1687	28.3939
190206	2.0426	0.8953	26.7401	29.2371	32.0180	29.3059
190208	0.8465	0.7656	28.7308	27.9908	24.9405	26.8783
190218	1.0287	0.8519	26.7262	28.1039	26.5251	27.0956
190236	1.4581	0.8519	24.7142	26.4614	26.9059	26.0712
190241	2.2057	0.7844	25.2123	25.7906	26.5320	25.8668
190242	1.1739	0.8131	24.8461	25.0035	26.9729	25.6630
190245	1.6657	0.7935	25.5751	26.7642	26.4166	26.2442
190246	1.8506	0.7731	*	22.7833	31.7158	27.5725
190247	***	*	32.7499	*	*	32.7499
190248	***	*	23.2220	*	*	23.2220
190249	1.7484	0.8131	20.0468	25.2523	27.0975	23.4244
190250	2.1139	0.8953	31.5101	33.3302	32.8381	32.5082
190251	1.3045	0.8131	21.4464	23.8389	25.1594	23.4545
190252	***	*	23.6924	*	*	23.6924
190253	***	*	22.8060	23.8037	22.2227	23.0784
190254	***	*	32.9290	*	*	32.9290
190255	0.7692	0.8422	22.2412	16.1593	23.8035	20.1022
190256	0.7962	0.8953	*	25.9577	25.9365	25.9461
190257	1.6689	0.7758	*	26.5505	22.7512	24.6733
190258	0.9996	0.8519	31.3715	26.1141	25.1993	27.3105
190259	2.0809	0.8422	*	26.5084	27.5518	27.0097
190260	***	*	*	29.3947	33.6227	31.1721
190261	1.3897	0.7935	*	27.0441	25.4757	26.2696
190262	***	*	*	30.3719	*	30.3719
190263	2.3166	0.8422	*	26.4202	29.7063	28.0046
190264	***	*	*	26.5842	*	26.5842
190265	***	*	*	22.6231	30.9260	27.1327
190266	2.3046	0.8131	*	*	24.3809	24.3809
190267	1.3959	0.8953	*	*	24.2794	24.2794
190268	1.6840	0.8422	*	*	29.1425	29.1425
190270	1.8773	0.8953	*	*	*	*
190272	1.2781	0.8422	*	*	28.4558	28.4558
190273	1.7599	0.8131	*	*	*	*
190274	1.6030	0.8953	*	*	*	*
190275	1.3353	0.8953	*	*	*	*
190276	0.8985	0.8519	*	*	*	*
190277	0.8585	0.8043	*	*	*	*
200001	1.3376	1.0078	25.2542	26.3045	28.1145	26.5665
200002	1.1589	0.8576	25.7212	27.1151	33.2695	28.3570
200008	1.3897	0.9889	27.7137	29.1836	29.3538	28.7775
200009	1.9223	0.9889	30.7510	32.5812	35.0743	32.7327
200018	1.3300	0.8576	23.5632	22.5027	24.6790	23.5933
200019	1.2790	0.9889	25.6649	27.7896	28.3413	27.2850
200020	1.3257	0.9970	32.6436	34.0916	34.5762	33.7909
200021	1.2191	0.9889	27.1381	29.2054	28.7614	28.4052
200024	1.6735	0.9611	27.5410	29.7817	31.0799	29.5022
200025	1.1700	0.9889	26.3124	28.5750	29.3607	28.1296
200031	1.3018	0.8576	21.2370	22.2151	23.7553	22.4067
200032	1.1814	0.8943	26.3322	26.8993	27.2276	26.8283
200033	1.8237	1.0078	29.3108	31.7007	33.6293	31.6179
200034	1.3331	0.9611	27.0582	27.0103	28.0417	27.3632
200037	1.2055	0.8576	24.1732	24.9418	26.7815	25.3847
200039	1.2958	0.9611	25.1179	26.6409	28.8043	26.8821
200040	1.2035	0.9889	25.9893	27.8053	25.5519	26.3690
200041	1.2063	0.8576	24.9670	26.6777	27.5067	26.3967
200050	1.2408	0.9977	27.6825	29.5033	30.1473	29.1598
200052	1.1149	0.8576	22.5159	24.4204	25.6238	24.1943
200063	1.1844	0.8576	25.8623	27.9748	28.2203	27.3998
210001	1.3569	0.9455	28.2858	29.3471	31.2355	29.6486
210002	1.9961	0.9982	32.3005	33.7388	36.0252	34.1115
210003	1.6227	1.0685	34.1109	30.7334	28.2566	30.8154
210004	1.4256	1.1009	33.6056	31.7132	33.9037	33.0694
210005	1.2608	1.1009	28.9554	29.5835	32.4081	30.3404
210006	1.0722	0.9982	25.9005	27.3620	27.9859	27.0801

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
210007	1.8012	0.9982	31.8767	30.7124	31.4125	31.3087
210008	1.4117	0.9982	24.3341	28.8850	31.8535	28.2955
210009	1.6519	0.9982	27.7900	30.2661	31.8273	29.9849
210011	1.3855	0.9982	30.8575	31.0966	30.7547	30.9036
210012	1.5987	0.9982	30.3078	31.1778	32.5327	31.3798
210013	1.1783	0.9982	28.5328	28.9917	32.1180	29.7735
210015	1.2996	0.9982	29.9261	32.2774	31.6903	31.3249
210016	1.6107	1.1009	32.3506	33.5493	35.3253	33.6944
210017	1.2881	0.8790	25.1890	26.8592	26.6208	26.2242
210018	1.2020	1.1009	29.5533	29.6521	31.5460	30.2549
210019	1.7211	0.9189	27.3731	28.7844	30.5485	28.9508
210022	1.4640	1.1009	35.4727	37.3092	36.1833	36.3047
210023	1.4887	1.0061	32.1812	33.0212	34.1664	33.1593
210024	1.8237	0.9982	30.6359	32.9434	34.5548	32.7605
210025	1.2386	0.8790	23.8552	24.8570	23.5175	24.0677
210027	1.4172	0.8790	24.6343	24.4821	25.2143	24.7929
210028	1.0685	0.9173	26.3469	26.7462	28.5214	27.2379
210029	1.2751	0.9982	31.0266	31.8539	32.9100	31.9599
210030	1.1907	0.8790	26.9763	32.2033	29.1790	29.4513
210032	1.1814	1.0639	27.0727	27.9359	29.2785	28.1119
210033	1.1638	0.9982	28.5534	29.2504	28.4350	28.7360
210034	1.2674	0.9982	30.2908	32.3827	33.0407	31.9431
210035	1.3015	1.0685	28.6484	27.3901	30.6692	28.8623
210037	1.2035	0.8790	27.3287	27.8394	28.8708	28.0168
210038	1.1889	0.9982	29.8121	32.3206	31.1563	31.0739
210039	1.1191	1.0685	30.4991	32.4139	35.1172	32.6911
210040	1.2211	0.9982	28.3559	29.2390	31.0882	29.5756
210043	1.3059	1.0061	26.6524	32.6961	29.2762	29.4119
210044	1.3653	0.9982	29.7339	30.3349	31.5463	30.5476
210045	0.9947	0.9189	14.2223	16.3724	19.6112	16.8138
210048	1.3788	0.9982	27.5043	26.0650	29.2464	27.5600
210049	1.2291	0.9982	26.0900	27.0161	28.5970	27.3355
210051	1.2949	1.0685	29.8892	29.5219	30.7954	30.0813
210054	1.2562	1.0685	27.4328	27.7607	28.6905	27.9555
210055	1.2423	1.0685	30.6941	31.4905	30.2010	30.7535
210056	1.3104	0.9982	30.0810	32.3518	33.2271	31.9625
210057	1.3548	1.1009	31.6787	32.8299	33.7287	32.7515
210058	1.1204	0.9982	31.0873	31.1988	32.0669	31.4540
210060	1.2444	1.0685	27.1764	29.9626	32.5141	29.9232
210061	1.2608	0.8978	23.1645	25.0253	26.6842	25.0237
220001	1.2266	1.1366	30.6070	31.2316	32.0843	31.3064
220002	1.3727	1.1359	32.4356	33.6649	35.9765	34.0715
220006	***	*	30.7673	33.6438	*	32.1319
220008	1.2881	1.1366	31.3385	34.7924	35.8680	34.0339
220010	1.2311	1.1366	30.7804	32.0925	33.7392	32.2158
220011	1.1377	1.1359	34.7655	36.5640	39.1234	36.8973
220012	1.4648	1.2652	37.8763	39.7564	41.7080	39.8261
220015	1.2980	1.0492	29.6315	32.4903	35.2373	32.4372
220016	1.1268	1.0492	30.4813	32.5863	33.1424	32.0662
220017	1.3192	1.1950	31.6170	33.3020	34.6575	33.1991
220019	1.0423	1.1366	24.4009	25.7855	26.3018	25.5041
220020	1.1282	1.1366	28.5288	30.8458	32.1528	30.5516
220024	1.2438	1.0492	28.7342	31.9491	33.0415	31.2656
220025	1.0377	1.1366	25.6478	30.4369	27.6973	27.7644
220028	***	*	31.7122	39.3089	*	35.2808
220029	1.1494	1.1366	30.6935	31.6363	32.6792	31.6972
220030	1.1029	1.0492	26.8849	28.1347	29.3714	28.1505
220031	1.5524	1.1950	36.8477	38.9433	39.4214	38.4403
220033	1.1944	1.1366	31.8249	32.3495	34.7005	33.0213
220035	1.4164	1.1366	31.4470	34.8739	36.1799	35.0977
220036	1.5109	1.1950	33.1436	35.9124	37.7301	35.6268
220046	1.4457	1.1366	30.4460	31.4510	33.8604	31.9507
220049	1.2244	1.1359	30.4740	32.4652	35.1134	32.7141
220050	1.0897	1.0492	28.3434	29.5194	30.3176	29.4115
220051	1.3045	1.0161	30.2552	30.1022	32.8693	31.0922
220052	1.1442	1.1950	32.4130	32.3532	34.9151	33.2027
220058	1.0107	1.1366	25.7247	27.8893	30.0344	27.9133
220060	1.1595	1.1950	32.5477	34.7336	36.8668	34.7674
220062	0.6343	1.1366	25.0766	25.4224	27.4755	26.0059
220063	1.2634	1.1359	30.2866	32.9283	32.2442	31.8304
220065	1.2730	1.0492	27.6009	30.1103	32.3814	30.0476
220066	1.3289	1.0492	27.8073	29.9736	*	28.8792
220067	1.2422	1.1950	30.2222	32.4019	33.9836	32.2190
220070	1.1474	1.1359	33.1299	34.2598	35.6271	34.3621
220071	1.8377	1.1950	36.5065	37.4087	40.0313	38.0126
220073	1.1883	1.1366	34.2989	36.0289	37.4249	35.9328
220074[3]	1.3509	1.1366	30.5607	31.4730	33.2081	31.7051
220B74[4]	***	*	*	31.4731	33.2082	32.3878

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
220075	1.5438	1.1950	30.9175	32.2957	33.3578	32.1956
220076	***	*	27.5148	*	*	27.5148
220077	1.6650	1.1007	31.7325	34.0168	34.7345	33.5108
220080	1.1616	1.1366	29.9595	31.1268	33.1640	31.3806
220082	1.2901	1.1359	30.0611	30.8230	32.2124	31.0616
220083	1.0665	1.1950	34.5118	34.5969	35.2758	34.8216
220084	1.2130	1.1359	30.9527	31.6955	34.6275	32.3755
220086	1.7237	1.1950	34.2388	35.3451	36.2385	35.3182
220088	1.9431	1.1950	35.8255	34.7637	37.0840	35.9299
220089	***	*	32.6305	34.8205	*	33.7125
220090	1.2399	1.1366	32.9011	34.1963	35.8969	34.3707
220095	1.1538	1.1366	28.0673	30.8626	31.1644	30.0341
220098	1.1402	1.1359	30.5869	31.5403	31.1288	31.1006
220100	1.3065	1.1950	31.9859	34.6599	35.7309	34.1819
220101	1.2969	1.1359	35.3464	37.7809	37.7292	37.0043
220105	1.1819	1.1359	33.2625	34.4029	35.8179	34.5236
220108	1.1980	1.1950	32.6131	33.8854	35.7009	34.0761
220110	1.9977	1.1950	39.2167	40.7382	43.8444	41.3138
220111	1.2195	1.1950	33.6167	34.2498	35.6223	34.5178
220116	1.8717	1.1950	36.4149	38.8799	40.0982	38.4137
220119	1.1330	1.1950	30.9965	32.0863	33.7200	32.3374
220126	1.1789	1.1950	31.4882	32.6938	35.6278	33.2725
220133	***	*	29.4855	34.9182	*	32.1170
220135	1.3036	1.2652	36.0203	37.5189	39.0296	37.5507
220153	***	*	*	19.8085	20.5063	20.1966
220154	***	*	*	28.7898	*	28.7898
220162	1.5984	*	*	*	*	*
220163	1.6202	1.1366	34.4874	37.4968	39.4893	37.2296
220171	1.6932	1.1359	32.7414	35.9948	36.4567	35.0742
220174	1.1935	1.1366	30.0406	30.9503	32.9140	31.3275
220175	1.2683	*	*	*	34.1572	34.1572
220176	1.6447	1.1366	*	*	31.4220	31.4220
230002	1.3244	1.0163	32.9010	32.7578	33.9708	33.2545
230003	1.2406	1.0355	27.5824	28.4716	28.9886	28.3365
230004	1.7096	1.0355	29.3934	31.5136	33.4644	31.5271
230005	1.2398	0.9336	25.8768	27.7463	29.0634	27.5857
230013	1.3847	1.0769	24.6511	27.2075	28.6430	26.7590
230015	1.1609	0.9158	26.2782	27.2541	28.9601	27.5257
230017	1.6503	1.0870	31.8821	32.5396	36.8045	33.8186

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
230019	1.6083	1.0769	32.3401	34.3213	35.1440	33.9325
230020	1.7473	1.0163	28.5646	29.5324	29.9492	29.3672
230021	1.5500	1.0355	26.5659	28.6169	29.5414	28.2373
230022	1.2709	0.9616	25.6683	30.1195	25.7846	27.0331
230024	1.6542	1.0163	32.1483	32.5892	34.5278	33.1070
230029	1.6185	1.0769	32.3538	32.3845	33.1482	32.6284
230030	1.2792	0.8863	23.8082	25.1100	25.1929	24.7213
230031	1.3564	0.9939	29.7232	30.0120	30.8870	30.2340
230034	1.3730	0.8863	24.4845	24.4141	29.1098	25.8641
230035	1.1989	0.9245	24.8822	25.6715	25.7099	25.4578
230036	1.4158	1.0769	29.3754	29.9642	31.0938	30.1642
230037	1.3051	1.0163	28.9244	28.5311	28.8547	28.7697
230038	1.7654	1.0355	28.2012	29.1263	30.1040	29.2001
230040	1.1781	0.9245	25.5154	26.3190	27.2850	26.3824
230041	1.5805	0.9410	27.8853	27.9569	30.3082	28.7064
230046	1.9171	1.0406	31.6235	32.2924	33.5304	32.5204
230047	1.4493	1.0020	31.1771	31.7075	32.0248	31.6483
230053	1.6704	1.0163	32.5711	32.1566	33.5440	32.7711
230054	1.8811	0.9361	25.7591	26.3251	28.1229	26.7477
230055	1.2545	0.8863	27.4349	28.4787	28.1881	28.0396
230058	1.1164	0.8863	25.9291	27.3156	27.9643	27.0820
230059	1.5366	1.0355	27.9091	28.5875	28.3602	28.2952
230060	1.2912	0.8863	28.2874	27.0288	28.7760	28.0396
230065	***	*	32.6255	*	*	32.6255
230066	1.3089	1.0355	30.6184	30.2104	32.3582	31.0743
230069	1.1826	1.0769	30.2663	31.3406	31.9675	31.2230
230070	1.6496	0.9000	25.6778	26.8315	28.0366	26.8669
230071	0.9448	1.0769	28.3064	29.6728	28.8879	28.9591
230072	1.3631	1.0355	26.2838	27.4742	28.8024	27.5413
230075	1.3503	1.0048	28.2540	30.9525	32.1166	30.4329
230077	1.8833	1.0769	29.8538	30.5567	31.0123	30.4735
230078	1.1919	0.8863	25.6809	25.7232	27.0069	26.0997
230080	1.2677	0.9410	24.1573	24.5432	25.6204	24.7909
230081	1.2315	0.8863	24.7374	26.4337	27.8106	26.3293
230085	1.2326	1.0870	23.4959	25.4289	27.6474	25.5352
230089	1.3431	1.0163	31.0522	32.8450	32.2311	31.9441
230092	1.3974	1.0163	28.6829	29.3442	30.5417	29.5455
230093	1.2157	0.8921	25.5804	27.4463	27.0572	26.7244
230095	1.2747	0.9410	22.8681	25.1854	25.9210	24.6704

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
230096	1.1759	1.0355	30.6024	31.7399	29.7225	30.6729
230097	1.6914	1.0355	28.2526	29.8962	31.5174	29.8789
230099	1.2187	1.0163	29.0221	29.3720	29.0975	29.1635
230100	1.1912	0.8863	24.1881	25.2118	25.6594	25.0496
230101	1.1683	0.8863	25.4839	28.4372	28.8608	27.6209
230104[5]	1.5940	1.0163	32.4634	32.4125	34.0195	32.9577
230B04[5]	***	*	*	*	34.0195	34.0195
230105	1.7840	0.9410	32.4583	30.5515	32.1124	31.7064
230106	1.2377	1.0355	25.3243	27.8584	30.0223	27.7696
230108	1.1612	0.8863	20.2539	24.4337	25.7477	23.4440
230110	1.2547	0.8863	27.0040	25.7196	27.0280	26.5815
230117	1.8428	1.0870	32.7994	33.0602	33.9176	33.2771
230118	1.0097	0.8863	23.6110	24.8890	24.8638	24.4402
230119	1.4376	1.0163	30.7488	31.9696	33.2050	32.0135
230121	1.2617	0.9616	26.4940	26.8361	27.7512	27.0484
230130	1.6808	1.0769	30.1608	31.2744	32.5613	31.3621
230132	1.5390	1.1216	32.3939	35.5304	38.2454	35.3559
230133	1.4288	0.8863	23.9442	25.0647	25.8537	24.9779
230135	1.3171	1.0163	25.9583	23.6005	31.5194	26.7533
230141	1.6162	1.1216	31.6152	33.2553	36.3124	33.7180
230142	1.2682	1.0163	27.8377	29.7417	29.9911	29.2242
230144	1.8275	1.0406	*	*	*	*
230146	1.3747	1.0163	26.8156	27.2621	29.0218	27.7286
230151	1.3315	1.0769	27.4546	29.8366	28.6724	28.6318
230156	1.5952	1.0406	32.3755	33.9034	34.7865	33.7050
230165	1.5981	1.0163	29.6376	31.4242	32.2855	31.1351
230167	1.6102	0.9862	29.8071	31.0657	32.8092	31.2497
230174	1.3695	1.0355	30.0563	29.7488	31.2469	30.3411
230176	1.3111	1.0163	28.1498	28.9798	29.2688	28.8195
230180	1.1203	0.8863	26.0707	24.9696	24.6007	25.1973
230184	***	*	34.6295	*	*	34.6295
230190	***	*	30.7875	33.8229	33.6724	32.7910
230193	1.3564	0.9939	25.1626	26.4728	28.4641	26.7224
230195	1.4220	1.0020	29.5656	30.9702	32.5549	31.0484
230197	1.6024	1.1216	32.0063	33.7128	34.8066	33.5218
230204	1.4319	1.0020	31.5615	32.2882	30.1982	31.3400
230207	1.2447	1.0769	25.4268	25.1983	26.8231	25.8122
230208	1.2210	0.9245	23.7523	24.3476	25.2481	24.4572
230212	1.0430	1.0406	31.9818	32.8567	33.4379	32.7607
230216	1.4797	0.9939	29.0147	29.2061	28.9586	29.0592
230217	1.4000	1.0048	30.1136	31.9732	33.0839	31.7836
230222	1.4250	0.9410	29.9341	30.6482	32.4404	30.9832
230223	1.3050	1.0769	28.6745	29.8430	31.8146	30.0918
230227	1.4805	1.0020	30.8218	33.6716	34.2762	32.7529
230230	1.4789	0.9862	29.8763	31.1712	31.4953	30.8603
230236	1.5420	1.0355	31.3110	30.8556	31.9100	31.3748
230239	1.3017	0.8863	21.0814	22.1579	23.5461	22.2561
230241	1.2014	0.9939	27.6106	28.5516	30.0248	28.7411
230244	1.4612	1.0163	29.6283	30.0405	32.5586	30.7596
230254	1.4848	1.0769	29.2653	29.5874	31.6332	30.2120
230257	0.9822	1.0020	29.6712	30.6372	30.0674	30.1070
230259	1.2689	1.0406	27.4217	27.5982	27.9572	27.6545
230264	2.0641	1.0020	22.7768	28.5416	29.2202	26.4138
230269	1.4695	1.0769	31.3226	31.3800	34.2694	32.4001
230270	1.3464	1.0163	28.5372	28.8173	29.2408	28.8719
230273	1.4675	1.0163	31.9862	31.5396	32.5730	32.0380
230275	0.5428	0.9000	23.8104	25.2133	22.3740	23.7479
230277	1.4623	1.0769	29.8372	31.4023	32.2545	31.1898
230279	0.5477	1.0769	27.2816	27.9726	26.8552	27.3526
230283	***	*	33.5531	*	*	33.5531
230294	***	*	31.6195	*	*	31.6195
230295	***	*	27.1298	*	*	27.1298
230296	***	*	*	34.2107	*	34.2107
230297	1.6920	1.0020	*	*	*	*
230298	0.7864	1.0020	*	*	*	*
230300	3.3739	1.0020	*	*	*	*
230301	1.0938	1.0020	*	*	*	*
240001	1.5502	1.0956	33.1499	34.7673	37.2211	35.0472
240002	1.8748	1.0479	31.6000	33.1051	34.6368	33.1537
240004	1.5904	1.0956	32.7010	32.5777	33.4596	32.9128
240006	1.2144	1.0941	31.0777	33.4777	32.8229	32.4953
240010	1.9694	1.0941	33.4668	32.7261	35.9131	34.0531
240014	1.0722	1.0956	29.8905	30.7519	33.4492	31.3964
240017	***	*	24.3596	*	*	24.3596
240018	1.2602	0.9891	28.1432	29.4995	30.5645	29.4376
240019	1.0341	1.0479	33.7546	32.7052	34.2547	33.5839
240020	1.1149	1.0956	31.3874	33.2449	34.5703	33.0767
240022	1.0628	0.9086	26.1920	27.3137	28.5905	27.3650

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
240030	1.3913	1.0598	26.5508	27.1312	27.6596	27.1140
240036	1.6412	1.1506	32.7028	34.2980	37.2207	34.8318
240038	1.4975	1.0956	31.9891	33.0554	34.7357	33.2517
240040	1.0533	1.0479	27.5074	28.9009	30.0255	28.8064
240043	1.2463	0.9086	23.3489	24.0708	25.7424	24.4202
240044	1.0855	0.9711	25.0988	26.8681	28.5705	26.7911
240047	1.5238	1.0479	28.6406	29.7835	35.6763	31.1190
240050	1.0906	1.0956	27.5553	30.9805	33.7964	30.9177
240052	1.2045	0.9086	28.7206	29.4617	31.0934	29.7879
240053	1.5034	1.0956	31.4324	33.1148	34.4210	33.0272
240056	1.3595	1.0956	33.1728	34.0845	35.8603	34.4104
240057	1.7893	1.0956	30.7703	33.4713	34.8374	33.0726
240059	1.0938	1.0956	31.0911	32.4803	32.5958	32.0873
240061	1.8565	1.0941	33.1799	32.0828	34.6031	33.3414
240063	1.5798	1.0956	33.7895	35.2877	36.9822	35.4065
240064	1.1742	1.0362	34.3757	27.2407	29.9917	30.4618
240066	1.5238	1.0956	35.3441	36.0705	39.6609	37.0754
240069	1.1970	1.0956	29.3718	30.9719	31.1673	30.5149
240071	1.1033	1.0956	28.6950	31.7754	32.5460	30.9921
240075	1.1892	1.0598	27.5039	29.1171	30.3230	29.0134
240076	1.0211	1.0956	30.6936	33.1439	33.7950	32.5947
240078	1.6525	1.0956	32.5785	34.6118	36.2276	34.5542
240080	1.9528	1.0956	32.5725	34.8064	36.5390	34.6291
240084	1.1356	1.0479	26.5975	27.0995	29.0275	27.5337
240088	1.2979	1.0598	28.0603	29.1387	30.7240	29.3339
240093	1.4592	1.0956	27.2928	29.1717	30.4744	29.0686
240100	1.3398	0.9086	30.8391	31.5774	30.9481	31.1202
240101	1.1985	0.9086	25.6963	26.8849	28.5503	27.1180
240104	1.2058	1.0956	31.6511	35.0736	35.8839	34.3227
240106	1.6107	1.0956	30.5927	32.8156	33.9984	32.4904
240115	1.4803	1.0956	32.0107	33.5288	36.2788	33.9365
240117	1.1638	0.9613	24.5750	27.6950	29.0894	27.1232
240128	***	*	23.3334	*	*	23.3334
240132	1.2650	1.0956	32.1233	34.6191	36.4252	34.2579
240141	1.1036	1.0956	31.4468	32.8689	34.2473	32.8968
240166	1.1587	0.9086	27.6987	26.5328	26.1732	26.6673
240187	1.2989	1.0956	27.8844	29.1582	30.9646	29.4017
240196	0.8461	1.0956	31.5965	34.3743	35.0345	33.6766
240206	0.9236	1.4402	*	*	*	*
240207	1.2386	1.0956	32.5589	34.6792	36.4569	34.6395
240210	1.2817	1.0956	32.7123	34.4184	36.5950	34.6242
240211	1.0511	0.9898	22.5430	17.4044	16.6158	18.6326
240213	1.4152	1.0956	33.8680	35.7818	37.4608	35.7776
250001	1.9682	0.8064	23.5222	23.7773	24.3404	23.8774
250002	0.9542	0.8418	23.4063	25.4201	25.0342	24.6390
250004	1.7768	0.8876	24.7907	25.8722	24.8086	25.1652
250006	1.1513	0.8876	24.4282	25.9199	27.0511	25.8310
250007	1.2347	0.8865	24.8929	27.7665	29.3479	27.3755
250009	1.2629	0.8330	23.0352	23.4866	24.9118	23.8161
250010	1.0425	0.7625	21.4322	21.8665	22.7988	22.0356
250012	0.9464	0.9294	21.5540	23.4837	26.4110	23.6997
250015	1.1839	0.7625	22.0067	22.2803	22.3685	22.2137
250017	1.1003	0.7625	22.7660	33.6840	25.7404	26.7935
250018	0.8821	0.7625	17.1276	17.9025	19.1108	18.0555
250019	1.5592	0.8865	25.7376	26.2199	27.7230	26.5566
250020	1.0032	0.7625	22.1851	23.7245	23.1521	23.0482
250023	0.8728	0.8418	18.0108	18.5067	19.5081	18.7150
250025	1.1408	0.7625	22.5621	23.1738	23.0555	22.9294
250027	0.9506	0.7625	24.4937	26.9922	32.5451	27.8439
250031	1.3442	0.8064	24.8139	25.9189	26.7507	25.8097
250034	1.5344	0.8876	26.1887	26.7996	27.9279	26.9954
250035	0.8644	0.7625	20.1622	19.1038	20.5251	19.9111
250036	1.0489	0.8000	20.3625	19.7951	22.5676	20.8309
250038	0.9524	0.8064	22.2571	26.9621	30.7960	25.9491
250040	1.4900	0.8418	24.5962	27.3366	26.2268	26.0467
250042	1.2561	0.8876	25.6807	26.1190	27.4610	26.4131
250043	0.9856	0.7625	18.8979	20.8841	21.1265	20.3159
250044	1.0366	0.7878	24.0508	24.9199	26.1732	25.0761
250048	1.6484	0.8064	25.2092	24.7659	27.6339	25.8354
250049	0.8724	0.7625	19.1044	20.4775	24.2227	21.0942
250050	1.3100	0.7625	20.8084	21.1657	22.4429	21.4806
250051	0.8661	0.7625	14.3741	13.9532	14.1662	14.1690
250057	1.1729	0.7625	22.7601	24.3654	22.9683	23.3321
250058	1.2368	0.7625	19.2502	18.9970	19.6720	19.3083
250059	0.9337	0.7625	23.8997	26.7491	25.5982	25.3589
250060	0.8114	0.7625	28.1431	25.4779	27.0354	26.8922
250061	0.8863	0.7625	17.8267	18.7413	25.1495	20.4689
250067	1.0933	0.7625	23.1193	25.2189	23.8027	24.0647

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
250069	1.4409	0.8284	22.6353	22.4194	23.4495	22.8355
250072	1.6773	0.8064	25.8399	25.5337	27.5791	26.3185
250077	0.9730	0.7625	18.3735	19.0416	19.6333	19.0452
250078[6]	1.5862	0.8217	22.1243	22.8430	23.9598	22.9835
250079	0.8929	0.7625	45.5166	43.0845	46.0349	44.8461
250081	1.3673	0.8284	23.9995	25.6808	24.8281	24.8312
250082	1.4108	0.8120	23.0287	23.5399	25.6218	24.1474
250084	1.2524	0.7625	19.6492	19.1604	19.5694	19.4644
250085	1.0180	0.7625	22.5513	24.2915	24.6757	23.8556
250093	1.1828	0.7625	23.0984	23.9128	26.4351	24.4989
250094	1.6985	0.8418	24.1422	24.7718	25.4232	24.7898
250095	1.0319	0.7625	21.7488	23.6140	25.9021	23.7849
250096	1.2039	0.8064	24.9187	26.3743	27.7291	26.3766
250097	1.4883	0.8132	21.8139	22.0211	22.7916	22.2478
250099	1.2765	0.8064	21.1269	21.5656	27.5757	23.2187
250100	1.5246	0.8284	25.6846	27.0286	27.5484	26.7626
250102	1.5941	0.8064	24.6652	25.4050	25.5327	25.2042
250104	1.4412	0.8284	23.4303	24.4311	25.4008	24.4456
250112	0.9611	0.7625	24.3069	26.3357	27.4162	26.0544
250117	1.1579	0.8418	22.2450	23.7337	24.5706	23.5014
250120	***	*	24.6370	26.6522	*	25.6905
250122	1.1273	0.8418	27.2795	27.4424	23.4908	26.0519
250123	1.3529	0.8865	26.6221	27.9058	29.8299	28.1122
250124	0.8374	0.8064	20.4394	20.5667	21.9420	20.9865
250125	1.3784	0.8865	27.5158	26.7687	32.7411	28.5838
250126	1.0188	0.9294	24.4126	25.0019	25.2581	24.9086
250127	0.8041	1.4402	*	*	*	*
250128	0.9646	0.8071	17.7624	21.7882	23.5918	21.3640
250134	0.9305	0.8064	22.2167	21.0211	22.0846	21.7641
250136	1.0279	0.8064	22.9468	25.2241	27.1479	25.0267
250138	1.3086	0.8064	24.3018	25.2642	27.3132	25.5727
250141	1.4788	0.9294	28.5922	30.5112	33.4413	31.0012
250149	0.8777	0.7625	16.8796	17.2268	17.0964	17.0715
250151	0.5535	0.7625	18.8846	22.8238	*	19.4286
250152	0.8224	0.8064	26.9334	26.4559	28.5526	27.2309
250155	***	*	22.5728	*	*	22.5728
250156	***	*	*	16.8659	*	16.8659
250157	***	*	*	29.6398	*	29.6398
250162	1.0512	0.8879	*	*	*	*

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
260001	1.6871	0.9677	27.9230	29.5271	31.1866	29.5279
260004	0.9098	0.8415	20.3217	21.3629	23.9584	22.0205
260005	1.5289	0.8963	27.7855	27.9477	31.1050	28.9332
260006	1.4506	0.8415	30.3440	27.3754	33.8253	30.6152
260009	1.2166	0.9423	24.2360	25.7546	26.6685	25.5694
260011	1.5896	0.9012	25.6387	27.5762	31.2612	28.1589
260015	1.0281	0.8423	24.6139	25.0640	25.0250	24.8952
260017	1.2999	0.8788	23.5713	25.0461	26.2621	24.9760
260020	1.7342	0.8963	27.4730	29.3080	30.9599	29.2695
260021	1.3078	0.8963	29.3646	32.6735	19.5810	26.0259
260022	1.3231	0.8713	23.3393	24.8713	25.9391	24.7196
260023	1.3699	0.8963	24.3192	25.4314	25.5899	25.1238
260024	1.1892	0.8415	19.4952	19.2199	20.7136	19.8201
260025	1.3980	0.8963	22.2451	24.0358	24.5042	23.6147
260027	1.6161	0.9423	26.3590	29.3811	31.0236	28.7837
260032	1.8567	0.8963	25.6763	27.4857	28.7183	27.3248
260034	1.0140	0.9423	25.0573	27.1685	28.7736	27.0783
260040	1.7152	0.8523	24.3938	25.9074	27.3680	25.8520
260047	1.4349	0.8415	25.4978	26.6343	27.2667	26.4804
260048	1.1842	0.9423	27.6117	28.1515	29.6969	28.5302
260050	1.1398	1.0250	25.0506	26.2346	27.8065	26.4425
260052	1.3079	0.8963	26.0052	27.6360	29.6998	27.7832
260057	1.0868	0.9423	20.9639	21.5925	23.8181	22.1486
260059	1.2940	0.8492	22.6922	22.3885	25.3025	23.4886
260061	1.1703	0.8415	22.4766	22.8589	23.6717	22.9808
260062	1.2720	0.9423	28.1661	28.4975	29.6156	28.7761
260064	1.3632	0.8504	22.2395	23.3498	21.4932	22.3902
260065	1.7932	0.8523	27.1014	29.3564	28.3411	28.3047
260068	1.7302	0.8437	26.0295	27.3475	28.1246	27.1648
260070	0.9675	0.8415	24.6331	21.9701	25.2997	24.0400
260074	1.2162	0.8437	25.6218	28.0468	28.6216	27.4576
260077	1.6215	0.8963	26.7466	27.6624	28.7204	27.7270
260078	1.2704	0.8415	20.1983	21.1539	23.1785	21.5536
260080	1.0067	0.8415	17.9107	18.6070	18.6813	18.3880
260081	1.4919	0.8963	28.1182	29.1890	32.0799	29.8100
260085	1.5522	0.9423	26.6718	28.0306	29.6514	28.1053
260091	1.4875	0.8963	28.0537	28.5473	30.2636	28.9683
260094	1.6131	0.8523	24.1473	23.8654	25.1491	24.3847
260095	1.3880	0.9423	24.2698	27.6196	29.9090	27.0428

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
260096	1.5235	0.9423	29.7312	30.7267	32.9383	31.1677
260097	1.1870	0.8715	25.0624	25.5634	27.3129	26.0310
260102	0.9832	0.9423	27.2145	26.7624	30.7678	28.2429
260104	1.5805	0.8963	28.6247	28.0235	29.5891	28.7625
260105	1.8545	0.8963	29.8848	29.4766	32.4292	30.5773
260107	***	*	25.8177	27.9710	29.7775	27.7682
260108	1.8284	0.8963	26.6374	27.0758	28.5654	27.4384
260110	1.6442	0.8523	24.7656	26.6030	28.0381	26.5202
260113	1.1405	0.8415	21.2072	21.8884	23.0826	22.0238
260115	1.2648	0.8963	23.1396	24.6389	25.5658	24.4741
260116	1.0458	0.8502	21.3503	20.7479	22.5536	21.5321
260119	1.2935	0.8423	27.9769	31.5490	31.5003	30.2553
260137	1.7473	0.9677	24.3273	27.6592	31.4091	27.8375
260138	1.8951	0.9423	30.4410	30.6284	31.7582	30.9548
260141	1.8720	0.8437	24.1555	25.5663	26.6684	25.5215
260142	1.0835	0.8415	21.5923	21.7609	22.8205	22.0859
260147	0.9520	0.8415	21.4235	22.1928	22.9689	22.1974
260159	***	*	22.6276	23.9515	24.3027	23.5850
260160	1.0593	0.8415	23.8257	25.5096	26.6715	25.4081
260162	1.4390	0.8963	27.0236	28.4660	30.5761	28.7108
260163	1.2126	0.8502	21.6408	21.5566	23.8644	22.3621
260166	1.2356	0.9423	29.1225	28.5858	29.5259	29.0833
260175	1.1188	0.9423	25.1817	24.6064	25.7069	25.1723
260176	1.7544	0.8963	29.3034	31.1056	30.6205	30.3614
260177	1.2273	0.9423	27.0185	28.7942	29.0815	28.3087
260178	1.9670	0.8437	25.4782	27.1201	26.9902	26.5986
260179	1.5300	0.8963	26.6069	28.3234	29.6316	28.1821
260180	1.5832	0.8963	28.2931	29.3820	30.7336	29.4601
260183	1.6777	0.8963	27.5577	29.2684	31.4916	29.4556
260186	1.4622	0.8788	26.9797	28.8610	29.1874	28.3622
260190	1.2174	0.9423	27.9137	30.5343	30.9003	29.7916
260191	1.4425	0.8963	24.6973	26.3244	27.8648	26.3560
260193	1.2316	0.9423	26.8922	28.1060	29.5436	28.1858
260195	1.2493	0.8415	22.6870	24.0411	25.0294	23.9197
260198	***	*	28.0021	27.2555	27.9093	27.7145
260200	1.2911	0.8963	28.2453	27.4784	30.5032	28.7982
260207	1.1540	0.8523	22.6109	22.9579	23.6392	23.1709
260209	1.1565	0.9012	25.0098	25.0749	26.4203	25.5829
260210	1.3936	0.8963	26.8745	30.5975	36.4055	30.6939
260211	1.4236	0.9423	40.9821	35.9113	37.1557	38.3595
260213	***	*	*	34.8953	*	34.8953
260214	1.2285	0.9423	*	*	31.0175	31.0175
260216	1.3061	0.9423	*	*	*	*
260218	0.8126	0.8415	*	*	*	*
260219	1.3193	0.8963	*	*	*	*
260220	2.3259	0.9677	*	*	*	*
270002[6]	1.1422	0.8738	24.0534	25.2907	28.3379	25.9065
270003	1.2584	0.8647	28.8700	29.1938	28.0543	28.6564
270004	1.6223	0.9011	26.1319	26.6779	28.5869	27.1558
270011	1.0749	*	22.7061	24.4696	*	23.5588
270012[6]	1.5982	0.8738	25.2914	26.5854	28.0672	26.6767
270014	1.8051	0.8958	25.8231	27.4811	28.2582	27.1798
270017	1.2990	0.8876	26.5404	27.4150	29.3542	27.7695
270023	1.5601	0.9011	25.5682	26.3076	28.1896	26.6590
270032	1.0426	0.9011	20.3469	20.4330	21.6360	20.8157
270049	1.7687	0.9011	27.1634	28.6880	29.8891	28.6468
270051	1.5057	0.8876	26.5621	24.9371	29.3941	26.9494
270057	1.2951	0.9011	25.5811	27.1838	28.3627	27.1314
270074	0.8884	1.4402	*	*	*	*
270081	1.0031	*	19.5612	20.0438	*	19.8033
270086	1.2445	0.8647	21.0808	20.7976	21.9017	21.2346
270087	1.3320	0.8607	25.9772	24.8022	24.9197	25.2102
280003	1.7657	0.9584	30.6124	30.1057	32.3780	30.9977
280009	1.8339	0.9301	27.0705	29.3634	28.1559	28.1948
280013	1.7229	0.9352	27.0250	27.9523	30.3120	28.4722
280020	1.6557	0.9584	27.3284	32.3896	29.4831	29.7225
280023	1.3212	0.9301	26.7980	29.5132	30.0717	28.7823
280030	1.9457	0.9352	29.5102	30.6991	31.8758	30.6846
280032	1.2934	0.9301	24.3995	24.7539	25.6549	24.9370
280040	1.5775	0.9352	28.7207	29.5276	30.7406	29.6454
280060	1.6610	0.9352	27.7496	30.3049	30.4625	29.5114
280061	1.4485	0.9189	26.0208	26.4824	28.9591	27.1709
280065	1.2531	0.9575	28.0581	28.0132	29.5470	28.5379
280077	1.3603	0.8808	27.0860	28.2206	29.9223	28.4622
280081	1.6801	0.9352	28.7464	31.1212	28.9696	29.5987
280105	1.2549	0.9352	27.8599	29.8488	30.0472	29.2901
280111	1.1716	0.8728	24.5617	27.4853	28.3541	26.8745
280119	0.8951	1.4402	*	*	*	*

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
280123	0.9698	0.8851	15.4047	22.2185	20.2741	18.6145
280125	1.5869	0.8728	22.1345	23.2900	24.7466	23.4403
280127	1.8311	0.9584	29.3684	25.6806	26.5659	26.9809
280128	2.7483	0.9584	28.5422	28.8734	27.1024	28.1542
280129	2.0397	0.9352	*	27.8793	27.9511	27.9201
280130	1.3828	0.9352	*	29.8588	29.9645	29.9170
290001	1.7733	1.0447	36.3129	35.5113	33.3318	34.9953
290002	0.8643	0.9810	17.3876	23.9348	22.7362	20.8857
290003	1.7936	1.1618	30.3373	32.8182	34.6433	32.6128
290005	1.4659	1.1618	28.3366	31.7107	34.2373	31.0988
290006	1.0859	1.0447	31.7301	31.9838	33.3243	32.3927
290007	1.7328	1.1618	38.1938	39.7323	41.2395	39.7814
290008	1.2096	0.9810	27.3019	31.1116	33.2473	30.5254
290009	1.6411	1.0447	36.2724	32.3348	34.2103	34.2313
290012	1.3318	1.1618	32.3966	35.7988	38.3731	35.4928
290019	1.4597	1.0447	29.3650	30.5964	32.2817	30.8014
290020	1.0263	0.9810	23.2103	27.6277	27.2908	25.9794
290021	1.6712	1.1618	32.7894	36.7310	36.8728	35.4897
290022	1.7123	1.1618	29.9717	33.5330	38.8262	33.9045
290027	0.8935	0.9810	23.9959	23.9818	29.1123	25.2227
290032	1.4431	1.0447	31.6711	34.6589	36.9175	34.3272
290039	1.5448	1.1618	32.1423	34.9622	34.6359	33.9800
290041	1.4915	1.1618	34.2436	37.6077	38.4445	36.9271
290042	***	*	*	22.4859	*	22.4859
290044	***	*	37.1662	*	*	37.1662
290045	1.6533	1.1618	33.1512	34.4584	38.2560	35.4030
290046	1.4027	1.1618	*	38.7966	38.3112	38.5285
290047	1.4184	1.1618	*	33.4695	35.6381	34.5617
290049	1.3300	1.0447	*	26.0725	33.4278	30.0568
290051	1.8875	0.9990	*	*	32.5277	32.5277
290052	1.1616	0.9810	*	*	*	*
290053	1.5842	1.1618	*	*	*	*
300001	1.4410	1.0965	29.2260	29.8145	31.0122	30.0658
300003	2.0316	1.0965	34.7900	37.0886	37.7246	36.5486
300005	1.3792	1.0965	27.8000	27.8431	28.8402	28.1813
300011	1.3314	1.0965	30.9403	31.8928	33.0785	31.9921
300012	1.3237	1.0965	30.4972	31.2655	33.0569	31.6605
300014	1.2315	1.0965	29.7667	29.1847	30.7735	29.9271
300017	1.2868	1.0965	29.9560	31.6699	33.4164	31.6776
300018	1.3179	1.0965	29.4270	31.7891	31.5028	30.9784
300019	1.2444	1.0965	27.5672	28.2287	28.3114	28.0677
300020	1.1989	1.0965	30.8491	30.9783	32.4655	31.4533
300023	1.4456	1.0965	31.0040	31.2726	32.3202	31.5699
300029	1.8191	1.0965	29.8117	31.4429	32.0033	31.1351
300034	1.8497	1.0965	30.7676	31.6880	33.5537	32.0221
310001	1.7566	1.2967	41.7460	39.3391	41.4946	40.8285
310002	1.7978	1.2762	37.9183	37.8652	37.9484	37.9115
310003	1.1900	1.2967	36.2346	39.0785	40.1543	38.5772
310005	1.3403	1.1518	32.1319	33.6311	34.7657	33.5615
310006	1.4377	1.2967	28.4771	28.7321	30.4296	29.2530
310008	1.3391	1.2967	32.6788	33.3172	34.3268	33.4561
310009	1.3663	1.2762	33.6940	33.6165	35.4624	34.2965
310010	1.2850	1.1294	33.9552	33.7009	36.0823	34.6173
310011	1.2621	1.1562	31.2907	34.3497	37.4855	34.3019
310012	1.5949	1.2967	38.3590	39.8568	41.9630	40.0675
310013	***	*	31.0447	35.6260	32.9488	33.1385
310014	1.8192	1.1294	30.0793	32.9016	35.0124	32.7784
310015	1.9138	1.2762	36.8818	39.2928	40.8229	39.0298
310016	1.3279	1.2967	35.6155	38.2740	41.0363	38.2718
310017	1.3641	1.2762	32.2434	35.7308	35.9806	34.6075
310018	1.1493	1.2762	30.3234	32.9704	32.6956	31.9532
310019	1.5497	1.2967	30.3518	30.6369	31.8930	30.9696
310020	1.5804	1.2967	33.5516	37.3372	38.4266	37.3159
310021	1.6487	1.2762	32.1929	31.6562	32.2064	32.0227
310022	1.3226	1.1294	30.4043	31.1951	32.8079	31.4442
310024	1.3882	1.1518	33.3415	33.8622	36.8666	34.7107
310025	1.4248	1.2967	34.3687	32.2630	32.1481	32.9322
310026	1.3223	1.2967	29.1588	30.1392	30.1321	29.8062
310027	1.4642	1.1518	29.7793	31.5967	34.6471	31.9789
310028	1.1908	1.2762	32.2977	33.9911	34.8332	33.7166
310029	1.7788	1.1294	32.9246	33.6695	35.2084	33.9519
310031	2.8674	1.1294	37.0668	39.3783	39.5911	38.6587
310032	1.3219	1.1294	30.7865	33.0258	35.2402	33.0208
310034	1.4122	1.1294	31.7012	32.7523	36.8614	33.7123
310037	1.4774	1.2967	38.5415	38.2865	40.4642	39.0102
310038	1.8916	1.2762	35.9190	36.3344	39.8707	37.3884
310039	1.2411	1.2762	31.4278	33.2100	32.6425	32.4249
310040	1.2565	1.2967	33.8535	37.7945	41.2246	37.4729

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
310041	1.3353	1.1294	32.8390	33.9799	35.2009	33.9794
310042	***	*	34.4986	*	*	34.4986
310044	1.3490	1.1294	31.9678	33.7614	33.5868	33.0832
310045	1.6492	1.2967	36.7862	38.4424	39.2097	38.1284
310047	1.3479	1.1815	34.1520	37.3695	37.7220	36.4665
310048	1.3728	1.1518	32.9681	33.9506	34.5256	33.8364
310050	1.2464	1.2762	29.1732	32.3686	37.9214	32.9309
310051	1.4912	1.2762	35.0121	38.1174	39.7671	37.6899
310052	1.3240	1.1294	32.5778	33.5849	36.5494	34.2555
310054	1.4172	1.2762	34.4431	36.9095	38.2432	36.5609
310057	1.4320	1.1294	31.1268	31.8933	34.2052	32.3554
310058	1.0520	1.2967	27.1555	30.4080	30.4436	29.4047
310060	1.2542	1.2762	27.3415	27.8242	27.9134	27.7052
310061	1.2203	1.1294	31.6648	39.0538	33.5586	34.7383
310063	1.3457	1.1518	31.9247	33.8519	38.1481	34.4547
310064	1.5388	1.1815	35.7607	38.6310	39.8091	38.1472
310069	1.2581	1.1294	31.7642	34.4669	35.1376	33.8317
310070	1.4555	1.2762	34.3225	36.3279	36.9999	35.8881
310073	1.7832	1.1294	32.6733	34.2858	36.9249	34.6729
310074	1.4718	1.2967	40.3494	39.6196	39.0729	39.6565
310075	1.4275	1.1294	31.5226	32.5338	33.5253	32.5120
310076	1.6448	1.2762	38.0643	37.5163	38.1671	37.9213
310077	***	*	34.6085	*	*	34.6085
310078	***	*	30.5761	*	*	30.5761
310081	1.2628	1.1294	30.1561	31.0699	31.7981	31.0164
310083	1.3218	1.2762	30.3580	31.9151	28.3406	30.1104
310084	1.2657	1.1294	33.5941	32.6051	34.9626	33.7180
310086	1.2600	1.1294	29.5566	29.8794	30.9467	30.1385
310088	1.1245	1.1815	29.9929	30.3552	31.2437	30.5511
310090	1.2386	1.1518	32.8191	33.4615	33.9174	33.3962
310091	1.1323	1.1294	29.3969	31.9762	35.2913	32.2231
310092	1.4086	1.1294	29.7958	32.7054	32.8431	31.7811
310093	1.2195	1.2762	29.1288	30.2860	32.3860	30.5694
310096	1.9397	1.2762	34.1524	35.0707	34.2014	34.4700
310105	1.1625	1.2967	30.1069	32.5672	32.0277	31.5553
310108	1.4023	1.2762	33.0172	34.5866	36.2848	34.6399
310110	1.3135	1.1294	33.2246	33.4809	35.6825	34.1576
310111	1.2528	1.1294	31.8393	34.8284	36.0748	34.2685
310112	1.3282	1.1294	31.2372	32.2676	34.5337	32.6225
310113	1.2435	1.1294	31.0436	33.6771	35.0245	33.3355
310115	1.3174	1.2762	29.5320	31.9208	32.1197	31.2483
310116	1.2969	1.2967	29.2748	29.8144	27.8677	28.9754
310118	1.3573	1.2967	31.1803	31.2296	32.8286	31.7723
310119	1.8877	1.2762	43.1238	41.5702	41.2997	41.9839
310120	1.0872	1.2762	29.2535	33.3861	35.1661	32.4713
310122	***	*	*	41.9029	*	41.9029
310123	***	*	*	37.1022	*	37.1022
310124	***	*	*	41.8827	*	41.8827
310125	***	*	*	36.2186	*	36.2186
310126	***	*	*	*	34.3189	34.3189
320001	1.6824	0.9395	29.6182	30.0077	31.4193	30.3604
320002	1.5338	1.0558	32.0477	33.1342	34.1610	33.1629
320003	1.1309	1.0180	27.6222	31.4473	31.5792	30.3543
320004	1.3276	0.8834	24.7803	26.2073	28.2407	26.4288
320005	1.4229	0.9205	24.7543	28.7893	25.2168	26.1583
320006	1.2577	0.9205	26.9080	28.0964	28.5177	27.8957
320009	1.5793	0.9395	32.0116	27.8084	31.3296	30.3190
320011	1.1539	0.9171	25.6693	27.9522	28.9951	27.5543
320013	1.1122	1.0180	22.8283	30.5865	31.2890	27.7704
320014	1.0863	0.8834	27.2806	28.7089	30.4803	28.8692
320016	1.1877	0.8834	25.0835	27.1492	26.6392	26.3157
320017	1.2526	0.9395	31.6357	33.3496	30.5787	31.7132
320018	1.5466	0.8858	26.5109	25.9248	28.3465	26.9112
320019	1.4058	0.9395	27.8067	35.0217	28.7067	30.2291
320021	1.6177	0.9395	26.9918	28.8504	29.6464	28.5375
320022	1.1805	0.8834	23.9595	25.3707	27.5152	25.6824
320030	1.0355	0.8834	21.0378	24.4497	25.5267	23.7760
320033	1.2179	1.0180	31.7114	30.1471	30.1846	30.6573
320037	1.2261	0.9395	24.9657	25.2876	27.8982	26.0668
320038	1.2583	0.8834	21.7022	32.7192	31.6526	29.0049
320057	0.9342	1.4398	*	*	*	*
320058	0.7891	1.4398	*	*	*	*
320059	0.9914	1.4398	*	*	*	*
320060	1.0123	1.4398	*	*	*	*
320061	1.0244	1.4398	*	*	*	*
320062	0.9178	1.4398	*	*	*	*
320063	1.3924	0.9119	25.0031	26.0104	27.4946	26.1581
320065	1.3068	0.9119	27.3163	25.7945	26.9130	26.6849

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
320067	0.8969	0.8834	24.9865	24.7025	25.4121	25.0457
320069	1.0788	0.8834	22.4128	23.9863	25.3151	23.9147
320070	0.9255	1.4398	*	*	*	*
320074	1.2398	0.9395	31.1333	28.4396	28.8088	29.1311
320079	1.2567	0.9395	26.1188	27.6877	31.5661	28.5366
320083	2.4441	0.9395	26.6921	29.5483	32.9476	29.7656
320084	0.9659	0.8834	17.5788	22.7706	24.2902	21.5110
320085	1.7552	0.8858	27.9944	27.4100	28.4537	27.9656
320086	1.4549	0.8834	*	*	*	*
320087	1.4087	1.0558	*	*	*	*
330002	1.5746	1.2996	30.9600	32.1956	34.7270	32.6026
330003	1.3519	0.8800	24.4326	25.2223	26.8363	25.5134
330004	1.3486	1.0684	28.0594	30.2236	30.3221	29.4844
330005	1.5906	0.9556	30.3200	31.5030	33.2851	31.7057
330006	1.2777	1.2996	33.6284	34.2001	36.3305	34.6909
330008	1.1661	0.9556	23.4429	25.2005	26.2141	24.9418
330009	1.3679	1.2996	36.2820	38.9166	41.3797	38.8021
330010	1.0125	0.8330	20.7476	19.7098	20.5805	20.3268
330011	1.3769	0.8688	25.1308	27.4747	26.8269	26.4855
330013	1.9457	0.8800	26.4578	26.8382	28.8039	27.3887
330014	1.3340	1.2996	42.1759	45.7619	46.3170	44.6766
330016	***	*	22.0493	23.0769	*	22.5738
330019	1.3054	1.2996	38.5368	39.7429	44.5669	40.8893
330023[6]	1.5332	1.3003	35.9428	36.4736	37.5135	36.6971
330024	1.8017	1.2996	42.7691	43.2342	44.8070	43.6044
330025	1.0470	0.9556	21.2565	23.2424	24.2702	22.9271
330027	1.3957	1.2809	42.8000	45.1920	45.9571	44.5424
330028	1.5242	1.2996	36.6498	36.2901	38.0149	36.9921
330029	0.5263	0.9556	23.2039	24.0679	22.9332	23.3387
330030	1.1557	0.8874	24.6175	25.3454	25.5089	25.1589
330033	1.2306	0.8486	24.5510	24.8022	25.0215	24.7867
330036	1.2083	1.2996	29.1884	30.3757	30.4659	30.0058
330037	1.2293	0.8874	22.3689	21.9246	23.4915	22.5873
330041	1.3172	1.2996	37.4883	36.9934	37.1651	37.2207
330043	1.4628	1.2686	39.1643	38.8060	40.6094	39.5025
330044	1.3448	0.8688	26.5669	28.2293	28.2638	27.6922
330045	1.4081	1.2686	38.1269	40.0326	41.6565	39.9725
330046	1.3741	1.2996	50.3152	47.4975	52.2397	49.9710
330047	1.2134	0.8330	24.3932	24.9934	22.9948	24.1095
330049	1.4894	1.2791	29.8350	34.8585	34.9740	33.3449
330053	1.0882	0.8874	20.6272	21.8383	20.1303	20.8285
330055	1.5371	1.2996	41.5934	42.2007	44.2343	42.7274
330056	1.3952	1.2996	36.0136	38.8910	39.9662	38.2404
330057	1.6801	0.8800	26.4989	27.7121	30.1821	28.1418
330058	1.2660	0.8874	22.2524	22.6852	23.6296	22.8638
330059	1.5525	1.2996	41.7343	44.9162	45.3691	44.0386
330061	1.1747	1.2996	36.0587	37.8828	37.8649	37.2897
330064	1.2588	1.2996	38.0437	38.2332	41.5737	39.3172
330065	1.0605	0.9556	25.3043	24.4004	26.2288	25.3194
330066	1.2723	0.8800	29.1780	25.8174	27.2085	27.4297
330067[6]	1.3943	1.3003	27.8900	29.2571	30.7537	29.2927
330072	1.3016	1.2996	37.8505	39.6996	41.4605	39.5860
330073	1.1038	0.8874	22.5592	23.4020	25.1392	23.7038
330074	1.1944	0.8874	22.6629	23.4576	23.1016	23.0811
330075	1.1185	0.9829	23.1592	24.2552	23.7522	23.7243
330078	1.4694	0.9556	25.8073	27.2870	27.6682	26.9480
330079	1.3803	0.9685	24.6054	24.9941	27.9479	25.8292
330080	1.1780	1.2996	39.1417	38.9405	40.2067	39.4434
330084	1.0863	0.8263	22.5573	25.6880	27.3434	25.1538
330085	1.1548	0.9433	25.3285	26.6235	27.1707	26.3816
330086	1.3186	1.2996	32.7675	35.5269	40.9768	36.5732
330088	1.0081	1.2686	34.0789	35.3871	37.4716	35.6517
330090	1.4585	0.9067	25.5351	26.8730	27.7306	26.7370
330091	1.3835	0.9556	25.9378	27.0040	28.3034	27.0888
330094	1.2594	0.9863	25.7116	26.9148	28.6213	27.1131
330096	1.1975	0.8263	22.7189	24.2422	24.7895	23.9180
330100	1.0911	1.2996	38.3333	39.6244	39.3170	39.1012
330101	1.8981	1.2996	40.1929	43.7944	45.5412	43.2290
330102	1.4092	0.9556	25.3879	26.6887	27.2543	26.4455
330103	1.2001	0.8333	22.8242	24.5585	25.4919	24.2908
330104	1.3423	1.2996	33.7537	35.1076	36.5894	35.1635
330106	1.6920	1.4928	43.8210	46.3657	48.2903	46.1855
330107	1.2342	1.2686	34.9047	35.7384	38.0262	36.2534
330108	1.1276	0.8316	23.2919	23.9368	25.3023	24.1897
330111	0.9664	0.9556	20.3473	40.4349	23.2134	25.3146
330115	1.1983	0.9829	25.2373	23.8235	24.3898	24.4747
330119	1.7295	1.2996	39.0528	42.2901	41.2365	40.8433
330125	1.7387	0.8874	27.2920	28.0584	29.4817	28.3197

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
330126	1.3052	1.2791	35.2257	36.5689	37.7807	36.5517
330127	1.3108	1.2996	45.3680	45.2993	45.2554	45.3073
330128	1.2260	1.2996	39.5197	41.7790	43.3437	41.5733
330132	1.1197	0.8394	21.0479	21.7648	22.1452	21.6693
330133	1.3681	1.2996	39.3837	38.5228	39.9025	39.2587
330135	1.2098	1.2791	27.9132	32.0525	33.2314	31.0904
330136	1.5310	0.9433	25.8531	26.6680	25.4198	25.9630
330140	1.8047	0.9829	27.6183	29.3461	31.1333	29.4088
330141	1.3185	1.2686	39.4701	39.3741	39.1733	39.3359
330144	0.9870	0.8319	22.9561	23.3874	24.9304	23.7659
330151	1.2181	0.8319	21.7665	19.7959	21.6339	21.0262
330152	1.2985	1.2996	37.6721	38.2079	39.5754	38.5010
330153	1.7178	0.8800	26.4386	28.4446	28.9944	27.9872
330154	1.6910	*	*	*	*	*
330157	1.3789	0.9433	26.5686	27.1432	29.7622	27.7887
330158	1.6698	1.2996	38.2033	41.7010	39.5946	39.8288
330159	1.3560	0.9829	28.2774	31.7835	33.8484	31.2093
330160	1.5496	1.2996	36.6208	37.1915	39.0970	37.6431
330162	1.3350	1.2996	34.9460	37.6226	38.7638	37.1399
330163	1.1200	0.9556	27.1933	28.3910	28.6252	28.0762
330164	1.4912	0.8874	27.7217	27.8746	29.8458	28.5206
330166	1.0574	0.8263	20.4680	20.7121	22.8506	21.3017
330167	1.6289	1.2809	36.7653	39.1251	39.2421	38.3481
330169	1.3986	1.2996	45.3774	46.4939	47.5404	46.4032
330171	***	*	30.4005	35.1577	*	32.5880
330175	1.1294	0.8523	23.8509	24.1005	26.7883	24.8942
330177	0.9937	0.8263	20.6338	22.9834	23.4299	22.3277
330180	1.1910	0.8800	24.3761	25.4170	26.8658	25.5784
330181	1.3026	1.2809	41.4104	43.0977	46.2181	43.5492
330182	2.2884	1.2809	40.9014	41.3033	42.7962	41.6653
330184	1.3684	1.2996	35.8102	39.0437	39.7242	38.2068
330185	1.2655	1.2686	36.3155	38.4002	39.6724	38.1541
330188	1.2407	0.9556	25.1153	27.5988	29.7318	27.4390
330189	1.2886	0.8800	22.3484	22.4383	25.8125	23.5451
330191	1.2849	0.8800	25.5656	26.4328	28.2949	26.8179
330193	1.4321	1.2996	39.9327	39.8910	40.0280	39.9502
330194	1.7935	1.2996	45.5639	46.8880	49.8886	47.4712
330195	1.7073	1.2996	39.7802	41.7885	43.3213	41.6784
330196	1.2869	1.2996	36.7178	38.2525	38.6949	37.9132
330197	1.1136	0.8263	26.8921	25.9872	26.5525	26.4721
330198	1.3912	1.2809	33.4930	34.8985	35.8715	34.8139
330199	1.1935	1.2996	38.6407	40.3948	39.4076	39.4837
330201	1.7804	1.2996	37.2064	42.6707	46.5114	42.1342
330202	1.3955	1.2996	37.4150	37.4158	38.7624	37.8761
330203	1.4160	0.9829	32.1207	34.0499	34.6525	33.6392
330204	1.4430	1.2996	39.6393	41.9953	39.5324	40.4256
330205	1.2294	1.2791	31.9510	33.9418	35.3792	33.7857
330208	1.1943	1.2996	32.1256	33.5287	37.1735	34.2445
330209	***	*	30.2038	*	*	30.2038
330211	1.0830	0.8263	24.4470	25.8752	24.9432	25.1110
330213	1.0707	0.8263	24.4049	27.4890	28.5370	26.7729
330214	1.8814	1.2996	41.8719	42.1339	43.3229	42.4638
330215	1.2786	0.8688	23.7361	23.9583	26.3978	24.6841
330218	1.0902	0.9829	26.9638	26.9982	28.4113	27.4691
330219	1.7204	0.9556	29.8889	32.5658	33.2147	31.8659
330221	1.3692	1.2996	39.2080	40.0514	42.5486	40.6779
330222	1.2766	0.8800	25.8507	27.7198	28.7858	27.5080
330223	0.9702	0.8263	23.3669	26.1264	27.1970	25.6003
330224	1.3098	1.0684	27.9231	29.1738	30.4784	29.2028
330225	1.2226	1.2809	32.3585	35.7651	32.9036	33.6819
330226	1.4014	0.8874	24.5646	24.8471	26.3685	25.2750
330229	1.2150	0.8418	21.9356	23.0577	23.9243	22.9673
330230	1.0289	1.2996	37.1298	38.6569	39.3863	38.3806
330231	1.1102	1.2996	40.6697	44.9422	48.9021	44.9242
330232	1.2065	0.8800	26.3313	27.4639	27.9615	27.2545
330233	1.5351	1.2996	47.3497	52.7070	40.8539	46.1540
330234	2.3437	1.2996	48.2306	49.3219	49.8804	49.1357
330235	1.1500	0.8263	27.7031	29.4346	30.8034	29.3085
330236	1.5506	1.2996	40.2386	42.8981	42.6205	41.9572
330238	1.2715	0.8874	21.7435	21.8386	23.3953	22.3485
330239	1.2425	0.8418	22.3854	23.1885	24.6391	23.4010
330240	1.4750	1.2996	43.5753	40.5001	41.6132	41.8585
330241	1.8405	0.9829	30.2304	32.7683	32.9275	32.0178
330242	1.3113	1.2996	37.4870	36.9015	38.7875	37.7218
330245	1.7759	0.8688	26.1811	27.4326	28.6698	27.4612
330246	1.3712	1.2686	37.1611	35.7416	35.9577	36.2363
330247	1.1834	1.2996	35.4980	39.0219	41.3465	38.4859
330249	1.3316	0.9829	25.3246	24.6091	26.9856	25.6369

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
330250	1.3858	0.9182	27.1606	29.0080	29.6186	28.6251
330259	1.5048	1.2809	35.1514	36.4788	39.0213	36.8303
330261	1.2439	1.2996	33.7834	40.2579	38.0216	37.2344
330263	1.0104	0.8263	23.8738	24.1333	24.2125	24.0872
330264	1.3204	1.2686	30.4701	31.0557	32.5050	31.6017
330265	1.2458	0.8874	21.6477	23.9081	22.7433	22.7619
330267	1.3964	1.2996	32.8541	34.9885	35.3907	34.4227
330268	0.9313	0.8263	25.3567	23.8793	23.9135	24.3481
330270	2.0751	1.2996	57.3596	55.2136	52.3154	54.6702
330273	1.3503	1.2996	37.0157	35.9298	39.7880	37.6026
330276	1.1580	0.8299	24.3300	26.0935	27.0445	25.8324
330277	1.2083	0.9067	26.4535	30.9053	30.8156	29.1295
330279	1.6269	0.9556	27.4539	29.6385	31.2393	29.4475
330285	1.9770	0.8874	30.1928	31.1235	31.8987	31.0835
330286	1.3541	1.2686	35.5895	37.6040	38.8556	37.3707
330290	1.6256	1.2996	39.4690	40.6933	39.8036	39.9788
330304	1.3052	1.2996	36.2845	37.3537	39.4632	37.8144
330306	1.4551	1.2996	36.3552	38.7713	39.0409	38.0895
330307	1.3359	0.9525	29.2529	29.5885	30.8121	29.9035
330314	***	*	26.2719	28.1788	22.6885	26.0610
330316	1.2408	1.2996	34.8567	37.1766	37.9357	36.6703
330331	1.2871	1.2809	39.8402	41.2694	44.1734	41.7992
330332	1.3079	1.2809	35.1646	37.0111	38.6932	36.9320
330338	***	*	37.7497	*	*	37.7497
330339	0.7634	0.8800	23.5786	24.3066	25.0057	24.2981
330340	1.2285	1.2686	37.9000	37.4161	38.4726	37.9274
330350	1.5271	1.2996	41.1339	44.4617	44.2389	43.3341
330353	1.2437	1.2996	45.9692	45.0977	46.0215	45.7029
330354	2.1277	*	*	*	*	*
330357	1.2871	1.2996	38.2286	40.3850	40.2132	39.5430
330372	1.2902	1.2809	36.1840	35.1297	37.0323	36.1065
330385	1.0494	1.2996	48.6175	49.0859	47.4017	48.3835
330386	1.3394	1.1544	29.9366	33.3216	32.9990	32.1911
330389	1.7350	1.2996	37.1862	39.6871	37.5908	38.1266
330390	1.2393	1.2996	36.3842	35.5562	38.7652	36.9292
330393	1.7377	1.2686	38.0619	39.2186	38.9324	38.7604
330394	1.6554	0.8688	27.3388	28.4597	28.8074	28.2132
330395	1.4189	1.2996	36.3921	37.5791	50.1316	40.5826
330396	1.3433	1.2996	37.4998	39.4904	39.1956	38.7403

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
330397	1.4089	1.2996	37.5682	41.4448	41.1682	39.9856
330399	1.1278	1.2996	34.7394	36.7626	39.8023	37.1079
330401	1.3528	1.2686	37.8559	40.4485	41.7839	40.0700
330403	0.9101	0.8874	25.5163	25.2937	28.7282	26.3693
330404	0.9370	1.2996	*	*	36.1069	36.1069
330405	0.9452	1.2996	*	*	35.2720	35.2720
330406	0.9450	0.8800	*	*	28.2733	28.2733
330407	0.9450	0.8800	*	*	*	*
340001	1.4864	0.9538	28.3988	29.5709	29.9718	29.3460
340002	1.7877	0.9431	28.4860	29.6622	30.7403	29.6338
340003	1.2356	0.8600	24.1602	26.0888	26.6831	25.7088
340004	1.4313	0.9108	26.6404	27.5283	27.9200	27.3739
340008	1.2695	0.9533	26.7443	27.7206	29.0661	27.8652
340010	1.3309	0.9519	27.2105	28.7544	29.5232	28.5205
340011	1.1740	0.8600	19.7441	22.0047	22.5152	21.4246
340012	1.2233	0.8600	23.2288	24.7576	24.9271	24.3221
340013	1.2357	0.9431	23.9492	26.3607	26.9152	25.7237
340014	1.6082	0.8934	27.4888	27.8384	29.5350	28.3126
340015	1.3958	0.9431	28.0585	28.3928	30.0979	28.8526
340016	1.3325	0.8600	25.6454	27.2365	27.9651	26.9661
340017	1.2762	0.9159	25.7780	27.5672	28.4866	27.2558
340020	1.1897	0.8756	26.4465	27.5473	28.3461	27.4406
340021	1.3374	0.9431	29.4864	29.3835	31.3630	30.1018
340023	1.3643	0.9319	26.4225	26.2716	27.6921	26.8315
340024	1.1350	0.8777	23.6638	26.4001	26.9001	25.6603
340025	1.2984	0.9159	23.5881	24.0101	25.2846	24.3051
340027	1.2182	0.9141	25.5973	26.3840	26.6528	26.2240
340028	1.5011	0.9888	28.0323	30.7591	31.9872	30.2242
340030	1.9784	0.9659	29.6630	30.4591	31.2051	30.4866
340032	1.4551	0.9538	26.5958	28.7636	29.2080	28.2299
340035	1.0953	0.8600	23.9669	24.6262	26.0846	24.8880
340036	1.3104	0.9645	27.2691	27.3860	29.0646	27.9430
340037	1.1213	0.8762	25.6262	29.0618	30.5362	28.5636
340038	1.2380	0.8853	22.4829	24.2111	26.2600	24.3749
340039	1.2814	0.9431	27.4457	27.8228	29.5069	28.2777
340040	1.9087	0.9314	27.6626	28.7434	30.1280	28.8804
340041	1.3330	0.8914	24.3595	26.8314	27.1285	26.1146
340042	1.2352	0.8600	25.0110	25.6349	27.0597	25.9223
340047	1.8089	0.8934	27.4022	28.4968	28.7620	28.2345

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
340049	1.7876	0.9659	30.6791	29.6826	31.5555	30.6578
340050	1.2009	0.9533	26.0365	27.5274	29.2290	27.6033
340051	1.1888	0.8762	23.9612	24.4561	25.4981	24.6514
340053	1.4922	0.9538	27.8577	28.9355	30.8342	29.2324
340055	1.2126	0.8914	26.0647	26.5752	29.0116	27.1561
340060	1.0616	0.9108	22.9097	25.1791	26.8387	24.9820
340061	1.7486	0.9659	27.0089	29.8574	31.2910	29.4148
340064	1.1203	0.8600	23.4233	23.9701	25.0814	24.1855
340068	1.2936	0.8600	22.6814	23.6757	24.7409	23.7006
340069	1.8405	0.9659	29.3439	31.4951	32.2171	31.0757
340070	1.2530	0.8934	25.3226	26.6546	27.7679	26.6192
340071	1.0610	0.9519	26.3921	27.9748	29.7343	28.0718
340072	1.1433	*	25.2493	24.1350	*	24.6895
340073	1.6533	0.9659	30.9849	31.6803	33.1054	31.9638
340075	1.2351	0.8914	25.1551	25.1438	26.8315	25.7438
340084	1.1232	0.9538	21.1363	23.1300	25.6885	23.2801
340085	1.1499	0.8934	26.5164	27.9572	29.1095	27.8498
340087	1.2332	0.8600	22.4287	25.4730	23.8360	23.9117
340090	1.3077	0.9645	26.4031	26.7428	28.3615	27.2242
340091	1.6024	0.9108	27.1285	28.8044	30.4371	28.8169
340096	1.2334	0.8934	24.9036	26.5438	26.5814	26.0415
340097	1.2445	0.8600	26.2228	29.8005	27.9810	27.9553
340098	1.4675	0.9538	28.2493	29.7180	31.3916	29.8233
340099	1.2911	0.8600	21.8564	23.9702	26.0077	24.0253
340104	0.7848	0.8762	16.1204	17.0165	19.9492	17.8311
340106	1.1410	0.8600	26.0892	26.1340	24.5154	25.5147
340107	1.2007	0.9036	24.1762	26.5626	27.3565	26.0755
340109	1.2446	0.8844	25.4464	26.6383	26.6479	26.2348
340113	1.9481	0.9538	28.5587	30.3841	32.3786	30.4669
340114	1.5308	0.9659	28.3222	28.1311	30.1207	28.8795
340115	1.6263	0.9659	26.7592	27.2781	28.0974	27.3867
340116	1.7456	0.8914	27.5881	29.3698	29.9447	28.9459
340119	1.2857	0.9538	25.6226	29.4470	27.2938	27.4288
340120	1.0687	0.8600	25.9134	25.5399	26.1465	25.8653
340121	1.0926	0.9055	23.1343	23.8854	25.1577	24.0802
340123	1.2775	0.9108	26.0637	28.5669	28.7150	27.7869
340124	***	*	22.2988	23.5480	25.7294	23.7132
340126	1.3296	0.9519	26.9866	28.2247	30.6902	28.6670
340127	1.1956	0.9659	26.4746	28.2161	28.8675	27.8614
340129	1.3097	0.9431	25.7976	26.7606	31.7863	27.9622
340130	1.3489	0.9538	26.1717	28.1594	29.5294	27.9867
340131	1.4682	0.9141	27.4750	28.8542	29.6571	28.6883
340132	1.2117	0.8600	23.5856	24.6162	25.3264	24.5301
340133	1.0195	0.8860	23.4678	24.8579	26.8850	25.1027
340137	***	*	22.1741	28.9672	27.0874	25.1889
340138	0.8951	0.9659	*	*	*	*
340141	1.6760	0.9055	29.3878	29.3171	29.3372	29.3473
340142	1.2125	0.8600	26.6886	27.7555	28.2413	27.5943
340143	1.5510	0.8914	28.0082	27.9777	29.3861	28.4863
340144	1.2179	0.9431	26.1865	27.0150	27.6548	26.9378
340145	1.2181	0.9431	25.8459	26.7482	28.0647	26.9036
340147	1.3028	0.9519	26.9162	28.2626	29.6960	28.3104
340148	1.5007	0.8934	25.3660	25.8325	27.9136	26.4054
340151	1.2158	0.8652	22.7736	23.2158	24.5782	23.5277
340153	1.9228	0.9538	27.6509	28.5979	29.8278	28.7241
340155	1.4754	0.9659	30.3443	30.9501	31.7570	31.0375
340156	0.8726	1.4401	*	*	*	*
340158	1.1298	0.9055	27.7816	27.6526	29.4110	28.3019
340159	1.2138	0.9659	24.2588	25.3108	28.1706	25.9718
340160	1.3517	0.8600	21.7923	23.4631	24.2016	23.1722
340166	1.3499	0.9538	27.1132	28.5395	29.9122	28.5241
340168	0.4196	0.9055	*	*	*	*
340171	1.1180	0.9538	27.8539	27.4701	31.1954	28.9097
340173	1.3292	0.9659	28.3502	30.2815	30.9843	29.9362
340177	***	*	26.7155	*	*	26.7155
340179	***	*	34.1895	*	*	34.1895
340182	***	*	27.8071	*	*	27.8071
340183	1.1992	0.9538	*	*	30.1261	30.1261
350002	1.8134	0.8229	22.4307	23.5869	23.6051	23.2272
350003	1.2130	0.8229	23.9639	24.9975	24.5812	24.5239
350006	1.5620	0.8229	21.2726	22.4626	23.4343	22.3837
350009	1.0716	0.8229	23.8681	24.5737	23.9795	24.1451
350010	1.0682	*	20.1290	20.4198	*	20.2749
350011	1.9173	0.8229	23.8400	24.1135	26.0201	24.6628
350014	0.9542	*	19.1684	17.5837	*	18.3437
350015	1.5995	0.8229	20.9046	21.3342	22.9120	21.7905
350017	1.2265	0.8229	22.4359	21.6187	24.0968	22.7333
350019[6]	1.6978	0.7944	23.2018	24.9615	24.9890	24.4059

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
350030	0.9535	0.8229	20.2722	22.5976	23.1023	22.0052
350063	0.9152	1.4402	*	*	*	*
350064	0.7388	1.4402	*	*	*	*
350070	1.7642	0.8229	25.2365	26.2454	26.2871	25.9341
360001	1.4799	0.9560	25.8669	28.8623	30.1038	28.2807
360002	1.2849	0.8711	24.5155	25.4859	25.2209	25.0798
360003	1.7733	0.9560	28.9672	30.7812	31.8976	30.5720
360006	1.8121	0.9884	30.1363	30.9806	31.8814	31.0226
360008	1.3171	0.8732	26.2632	27.5683	28.0202	27.2869
360009	1.5581	0.9272	25.0007	27.0618	28.2423	26.7842
360010	1.2393	0.8821	23.7825	24.7352	26.6040	25.0710
360011	1.2810	0.9663	27.6036	31.5587	29.9882	29.6807
360012	1.3486	0.9884	30.1416	31.0526	31.9837	31.0590
360013	1.0853	0.9272	27.0893	29.8412	30.2406	29.0673
360014	1.1225	0.9663	27.1017	27.0743	28.1811	27.4866
360016	1.4861	0.9560	27.8031	29.6298	30.2190	29.2170
360017	1.6201	0.9884	29.8525	31.7081	32.6006	31.4000
360019	1.3270	0.9248	26.9178	27.2997	28.8568	27.7070
360020	1.5822	0.9248	23.6400	25.6328	27.8079	25.6706
360025	1.4567	0.9243	27.4533	27.1546	28.4761	27.6994
360026	1.3756	0.9295	25.5379	25.2945	27.5757	26.1394
360027	1.5167	0.9248	27.4454	28.2923	29.9449	28.5691
360029	1.1798	0.9243	24.3216	26.4208	28.0191	26.2892
360032	1.2280	0.8570	25.0034	25.9916	27.2636	26.0961
360035	1.6374	0.9884	30.0172	31.3181	32.0858	31.1307
360036	1.1946	0.9248	27.8343	29.3514	29.9410	29.0671
360037	1.5001	0.9248	29.0046	30.0446	30.6552	29.8840
360038	1.5813	0.9560	25.4274	31.0611	31.3776	29.1463
360039	1.4591	0.9663	23.9783	24.7873	25.8216	24.8986
360040	1.2066	0.8957	24.8569	25.5337	26.7450	25.7186
360041	1.4501	0.9248	26.1522	26.6755	28.4439	27.1154
360044	1.1764	0.8697	21.5619	24.3840	24.7698	23.5350
360046	1.2135	0.9560	25.4673	26.2417	28.2972	26.6963
360048	1.8270	0.9243	29.3415	29.4378	30.0390	29.6177
360049	***	*	26.2222	*	*	26.2222
360051	1.6895	0.9295	26.8501	28.1167	29.4434	28.1389
360052	1.5468	0.9295	26.2066	26.8806	28.4731	27.2056
360054	1.3399	0.8732	22.9359	24.8248	23.6606	23.7907
360055	1.4307	0.8904	27.3941	30.0143	31.4794	29.5869
360056	1.5484	0.9560	26.5318	30.3677	31.3936	29.5171
360058	1.1205	0.8570	23.8119	24.5003	25.9295	24.7687
360059	1.4705	0.9248	29.3624	30.6173	30.6294	30.2157
360062	1.5585	0.9884	31.7422	32.8893	32.9025	32.5527
360064	1.5122	0.8904	25.2336	27.7795	28.6101	27.1797
360065	1.2711	0.9248	28.0405	29.7155	31.5066	29.7624
360066	1.4333	0.9272	27.1436	29.7605	30.9652	29.2904
360068	1.8611	0.9243	26.2065	26.6933	28.6335	27.1933
360070	1.6707	0.8824	27.2389	27.8891	28.8739	27.9944
360071	1.1464	0.8605	23.4619	26.4081	25.7956	25.2138
360072	1.5261	0.9884	25.9589	27.2286	29.1514	27.5017
360074	1.2807	0.9243	25.8959	27.5328	28.0283	27.1689
360075	1.1977	0.9248	26.8925	26.1657	28.3930	27.1862
360076	1.5138	0.9560	28.1013	29.0148	29.5342	28.9094
360077	1.5015	0.9248	28.4449	28.0133	28.3022	28.2551
360078	1.2809	0.9248	25.7885	27.4689	27.3652	26.8578
360079	1.7281	0.9295	27.2437	30.1230	31.3132	29.5591
360080	1.1029	0.8570	21.4526	22.7020	21.8806	22.0300
360081	1.3038	0.9243	29.8366	29.5312	31.4293	30.2595
360082	1.3717	0.9248	29.2561	28.7925	30.5837	29.5284
360084	1.6305	0.8824	27.3917	28.5402	29.2489	28.4186
360085	2.0543	0.9884	31.5800	32.8502	33.1295	32.5915
360086	1.6511	0.9295	25.4218	27.3124	29.1579	27.2845
360087	1.4327	0.9248	29.6579	28.4185	28.6336	28.8854
360089	1.1322	0.8570	25.3465	25.5608	28.0779	26.2939
360090	1.4636	0.9243	29.0199	30.7530	29.2662	29.6809
360091	1.3410	0.9248	25.8657	27.6809	28.2009	27.2637
360092	1.2543	0.9884	25.4954	25.4055	28.0813	26.3117
360095	1.4831	0.9243	26.4635	29.3787	30.2138	28.6213
360096	1.1357	0.8574	25.9275	26.8653	27.9514	26.9257
360098	1.4299	0.9248	25.5973	26.6382	26.5839	26.3006
360100	1.3412	0.8824	25.4523	23.6167	25.8143	24.9654
360101	1.4828	0.9248	27.6030	29.7817	30.6650	29.3474
360107	1.1819	0.9243	24.6095	26.0534	26.8180	25.8590
360109	1.0414	0.8570	26.3131	30.1382	30.4643	28.9118
360112	1.8517	0.9243	30.5715	31.1356	32.4403	31.4046
360113	1.2810	0.9560	26.6556	30.2871	30.3914	29.0679
360115	1.3316	0.9248	25.9841	26.1821	27.9711	26.7177
360116	1.2075	0.9560	25.1717	26.4968	26.8632	26.2118

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
360118	1.4770	0.9267	27.3884	28.5643	29.9823	28.5729
360121	1.3030	0.9243	27.4442	28.3835	31.6766	29.0947
360123	1.4055	0.9248	27.1920	28.0334	28.5435	27.9304
360125	1.2068	0.8570	24.1388	25.9067	27.1776	25.6998
360130	1.5015	0.9248	25.6570	26.3986	28.1811	26.7607
360131	1.3699	0.8824	25.3719	26.6635	27.3426	26.4485
360132	1.3752	0.9560	27.7724	29.4070	29.8411	28.9954
360133	1.5964	0.9295	29.8684	31.7521	33.1812	31.6383
360134	1.7720	0.9560	27.7339	28.5141	29.9198	28.7671
360137	1.7066	0.9248	26.1250	27.6894	30.3116	28.0264
360141	1.6058	0.8904	29.7937	31.1778	31.9397	30.9585
360143	1.3050	0.9248	28.3057	26.9394	28.0693	27.7630
360144	1.3418	0.9248	28.2473	28.9177	29.6547	28.9572
360145	1.6525	0.9248	27.1908	28.1835	29.3271	28.2631
360147	1.2564	0.8570	25.5854	27.5548	29.2371	27.4487
360148	1.1800	0.8570	26.0837	26.3399	25.7460	26.0503
360150	1.3208	0.9248	25.1217	28.2561	27.8840	27.0954
360151	1.4705	0.8824	25.3780	26.5636	26.9672	26.3117
360152	1.5119	0.9884	29.9425	31.5377	33.1017	31.5316
360153	0.9975	0.8570	19.8499	20.2147	21.8416	20.6630
360155	1.4647	0.9248	26.9127	28.9521	29.1711	28.3795
360156	1.1515	0.8689	24.3281	25.0833	26.2268	25.2579
360159	1.3304	0.9663	29.1529	28.6174	29.0187	28.9290
360161	1.3356	0.8904	25.4433	27.0875	27.7423	26.7565
360163	1.8751	0.9560	28.9742	30.0724	31.2087	30.0785
360170	1.1913	0.9884	28.5474	29.5954	30.0688	29.4397
360172	1.3778	0.9248	27.5669	28.8283	30.2330	28.8822
360174	1.2801	0.9295	26.8586	28.3143	28.3769	27.8664
360175	1.2484	0.9663	28.1531	28.3054	29.7499	28.7382
360179	1.5497	0.9560	30.0311	29.8299	31.3540	30.4095
360180	2.3384	0.9248	29.6633	31.4342	32.0225	31.0902
360185	1.2632	0.8574	25.6800	26.1080	26.4210	26.0790
360187	1.4958	0.9295	24.9353	25.7600	27.3745	26.0393
360189	1.1414	0.9884	26.3756	27.5097	28.3738	27.4374
360192	1.3272	0.9248	26.4616	27.5991	29.1999	27.8037
360195	1.0816	0.9248	25.0922	27.6155	27.2630	26.6353
360197	1.1347	0.9663	28.7580	28.9207	28.5267	28.7320
360203	1.1917	0.8570	24.4433	25.3692	27.7569	25.8604
360210	1.2160	0.9884	28.2976	29.6476	31.8182	29.9483
360211	1.6066	0.8612	25.7053	26.5459	27.5081	26.5645
360212	1.3073	0.9248	25.6080	26.6976	28.5882	26.9664
360218	1.2278	0.9884	29.8662	30.0101	31.1641	30.3583
360230	1.5270	0.9248	28.8018	30.0661	30.5995	29.8417
360234	1.4178	0.9560	25.9360	31.0656	30.7926	29.2957
360236	1.3042	0.9560	25.6728	29.5321	29.9367	28.6898
360239	1.3542	0.9295	27.2939	30.7728	31.7938	29.9658
360241	***	*	23.0662	25.7290	25.8137	24.8236
360242	1.9579	*	*	*	*	*
360245	0.6345	0.9248	20.6504	20.3426	20.4589	20.4760
360247	0.4196	0.9884	19.3677	*	*	19.3677
360253	2.2685	0.9560	33.2371	34.3347	34.6887	34.1008
360259	1.2289	0.9243	25.9878	27.2902	28.0886	27.1594
360261	1.3786	0.9091	22.3614	25.6332	26.6262	24.8465
360262	1.2971	0.9243	28.6995	30.1559	31.5637	30.2324
360263	1.9434	0.9272	25.1652	25.4864	28.1671	26.3880
360264	***	*	36.0754	*	*	36.0754
360265	***	*	36.6265	*	*	36.6265
360266	2.1579	0.9884	*	31.7565	29.8385	30.6504
360267	***	*	*	34.0936	*	34.0936
360268	***	*	*	34.0526	*	34.0526
360269	1.6786	0.9560	*	24.8552	25.5191	25.2444
360270	1.1268	0.8570	*	*	28.8677	28.8677
360271	3.3666	0.9560	*	*	28.4353	28.4353
360272	***	*	*	*	38.1014	38.1014
360273	***	*	*	*	37.6645	37.6645
360274	1.5099	0.9295	*	*	*	*
360275	2.9455	0.9243	*	*	*	*
360276	1.1398	0.8904	*	*	*	*
370001	1.6500	0.8607	26.0194	26.8884	28.4907	27.1489
370002	1.1283	0.7940	22.0476	23.6886	26.2486	23.9832
370004	1.1122	0.9316	26.7434	26.8521	28.2804	27.2961
370006	1.2357	0.8753	22.4802	23.9935	25.2307	23.8429
370007	1.0267	0.7940	19.4036	20.3706	21.1260	20.2913
370008	1.4427	0.8654	25.3352	26.6563	27.9944	26.6857
370011	1.0064	0.8654	21.9649	22.3391	23.1761	22.5133
370013	1.5425	0.8654	26.5364	27.2667	28.3502	27.4250
370014	1.0687	0.9258	25.9393	26.4488	28.8962	27.1132
370015	1.0271	0.8607	24.7547	25.5815	27.8061	26.1036

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
370016	1.5737	0.8654	26.7938	29.8284	30.4672	28.9281
370018	1.5019	0.8607	25.3573	24.6868	31.2335	27.0627
370019	1.1996	0.7940	22.0221	25.2814	26.7613	24.7202
370020	1.4078	0.7940	20.8723	22.7566	24.7520	22.7944
370022	1.1936	0.7940	24.6099	22.2289	26.4836	24.3187
370023	1.2829	0.8030	23.5170	24.0376	24.9580	24.1639
370025	1.3456	0.8607	23.9873	24.5547	24.8336	24.4546
370026	1.4491	0.8654	25.8428	25.5172	26.0203	25.7958
370028	1.9488	0.8654	27.8621	28.5619	29.9849	28.8120
370029	1.1361	0.7940	26.8508	28.5309	30.0134	28.4170
370030	1.0167	0.8607	24.1483	25.8212	26.0831	25.3424
370032	1.4760	0.8654	24.8626	26.2642	28.0739	26.3357
370034	1.2657	0.7940	19.5099	20.4106	23.2192	21.1228
370036	1.0933	0.7940	19.2318	19.8162	21.1544	20.1516
370037	1.6163	0.8654	24.9553	25.2350	26.8992	25.7116
370039	1.0405	0.8607	23.0254	23.5745	25.3422	23.9679
370040	0.9726	0.7940	22.8356	26.7395	19.7644	23.1717
370041	0.8882	0.8607	22.6731	22.9834	29.5074	24.8468
370047	1.4257	0.8654	24.1991	24.4766	27.8937	25.5718
370048	1.0283	0.7940	21.4543	22.0627	23.4848	22.3180
370049	1.3019	0.8654	23.8844	22.8755	24.2099	23.6444
370051	1.0508	0.7940	19.8329	19.3222	21.8716	20.3137
370054	1.2413	0.7940	22.4652	25.2142	23.4644	23.6684
370056	1.8680	0.8598	24.3986	25.5453	27.6178	25.8235
370057	1.0265	0.8607	19.8683	22.1337	23.1814	21.6645
370060	1.0459	0.8607	19.9025	23.3858	25.5571	22.9760
370065	1.0143	0.8036	21.2343	23.5815	24.0062	22.9091
370072	0.8303	0.8198	11.7942	13.0963	22.8598	14.5182
370078	1.5375	0.8607	27.8611	26.6972	30.4837	28.2981
370080	0.9491	0.7940	19.9595	22.4113	23.7231	22.0525
370083	0.9505	0.7991	19.2568	20.9878	21.9162	20.6846
370084	1.0061	0.7940	19.6230	20.7326	17.4202	19.1737
370089	1.4208	0.7940	20.6153	22.1523	22.0607	21.6436
370091	1.6034	0.8607	24.1438	25.8697	28.0487	26.0383
370093	1.6604	0.8654	26.0459	27.5356	26.7272	26.7697
370094	1.3758	0.8654	24.5555	26.5265	28.3512	26.4238
370097	1.2824	0.8598	26.3168	26.8138	28.0911	27.0820
370099	1.0542	0.7940	24.9971	26.7206	30.5437	27.4902
370100	0.9055	0.8040	17.9732	19.4002	20.6298	19.4039
370103	1.0410	0.7940	18.8933	19.4273	22.2675	20.0896
370105	2.0249	0.8654	26.7973	26.6399	30.5438	27.9858
370106	1.4205	0.8654	27.8979	28.5957	29.6797	28.7258
370112	0.9286	0.7940	16.0592	16.7888	19.0130	17.3059
370113	1.1290	0.8918	26.9720	26.4608	30.0061	27.8043
370114	1.5749	0.8607	23.0006	25.9841	27.1348	25.3838
370138	1.0939	0.7940	20.2528	22.1675	23.6348	21.8809
370139	0.9156	0.7940	19.4287	20.5156	21.0759	20.3639
370148	1.5358	0.8654	27.0904	28.1933	29.3447	28.2975
370149	1.3333	0.8654	23.3493	23.3423	23.0764	23.2547
370153	1.1065	0.7940	23.2778	24.1667	25.9238	24.4637
370156	1.0054	0.8061	25.2562	23.0104	22.7140	23.5681
370158	0.9397	0.8654	20.7641	21.5228	22.0056	21.4294
370166	0.8551	0.8607	25.1107	24.7251	26.3420	25.3952
370169	0.9454	0.8103	16.8252	16.6752	24.5389	19.7623
370170	0.9037	1.4402	*	*	*	*
370171	0.9688	1.4402	*	*	*	*
370172	0.8566	1.4660	*	*	*	*
370173	0.9839	1.4402	*	*	*	*
370174	0.9087	1.4402	*	*	*	*
370176	1.3162	0.8607	24.7655	24.9650	26.6687	25.4764
370178	0.9115	0.7940	16.0179	16.0747	15.6720	15.9157
370180	1.1405	1.4402	*	*	*	*
370183	0.9675	0.8607	24.7103	23.8419	30.3850	26.4222
370190	1.5008	0.8607	29.1568	34.6942	32.5635	32.3675
370192	1.9589	0.8654	27.6367	19.0638	19.1346	21.1814
370196	***	*	22.3498	20.8296	24.6984	22.8184
370199	0.9156	0.8654	23.3989	23.7412	23.9376	23.7092
370200	1.0550	0.7940	20.5175	21.7153	19.7060	20.6654
370201	1.7010	0.8654	23.8090	24.2364	25.5882	24.5327
370202	1.4932	0.8607	26.1132	25.7966	25.8261	25.9089
370203	1.9335	0.8654	22.8869	25.7770	30.3641	26.3107
370206	1.7567	0.8654	26.0353	27.5752	30.8151	28.1718
370210	2.1596	0.8607	23.3786	27.2111	25.7905	25.4315
370211	1.1754	0.8654	27.8737	28.6537	30.9656	29.3416
370212	1.8346	0.8654	19.1720	20.3495	20.0919	19.8985
370214	0.8938	0.8061	20.6217	21.0732	20.1495	20.5860
370215	2.3012	0.8654	31.5652	32.4087	32.0950	32.0525
370216	2.0087	0.8607	27.2429	25.8260	29.6658	27.5901

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
370217	***	*	26.8677	*	*	26.8677
370218	1.9642	0.8607	*	30.3445	23.7517	26.4626
370219	***	*	*	*	41.4392	41.4392
370220	2.2977	0.8654	*	*	21.3168	21.3168
370222	1.8772	0.8654	*	*	26.9175	26.9175
370223	0.8701	0.8654	*	*	24.0154	24.0154
370226	1.4674	0.7940	*	*	*	*
370227	0.9360	0.8607	*	*	*	*
370228	1.2380	0.8607	*	*	*	*
380001	1.2934	1.1170	29.5842	32.0770	33.8490	31.8559
380002	1.2138	1.0862	30.3385	31.5246	32.6830	31.5506
380004	1.6436	1.1170	32.6901	34.5432	36.1021	34.4662
380005	1.4169	1.0862	30.9087	33.2849	33.5765	32.5883
380007	1.9731	1.1170	33.9601	35.1697	36.4222	35.2090
380009	2.0902	1.1170	32.4016	34.5635	36.5688	34.5656
380010	***	*	34.4208	*	*	34.4208
380014	1.8829	1.1024	33.6078	33.1928	35.7101	34.1748
380017	1.7874	1.1170	34.2605	35.3734	36.8103	35.5005
380018	1.8534	1.0862	30.9923	31.8181	32.4884	31.7968
380020	1.4565	1.1118	29.6053	34.6183	35.7392	32.9987
380021	1.4960	1.1170	29.2164	32.6142	33.0628	31.5752
380022	1.3514	1.0862	30.1742	29.6224	30.9181	30.2428
380025	1.1713	1.1170	35.5084	36.4910	38.1507	36.7342
380027	1.3803	1.0862	26.4982	28.0247	31.4398	28.6437
380029	1.2643	1.0862	28.7994	29.4461	33.3368	30.6613
380033	1.7387	1.1118	33.4828	34.0094	36.0798	34.5620
380037	1.3323	1.1170	32.4033	32.7922	34.0321	33.1184
380038	1.2769	1.1170	34.5971	35.1105	35.0350	34.9151
380039	***	*	38.0989	*	*	38.0989
380040	1.4589	1.0862	31.2286	32.9081	34.4500	32.9490
380047	1.8055	1.0990	31.0584	32.8188	35.8165	33.3102
380050	1.4233	1.0862	27.1814	29.7329	31.3088	29.4435
380051	1.7208	1.1170	30.8891	32.8545	35.0114	32.9636
380052	1.2617	1.0862	25.6085	28.6119	27.7656	27.2630
380056	1.1176	1.0862	27.7253	29.1686	31.0210	29.2593
380060	1.5000	1.1170	32.0101	33.8863	35.1106	33.6775
380061	1.6410	1.1170	32.3699	34.5230	35.8922	34.2580
380071	1.3772	1.1170	31.7761	31.0901	31.6821	31.5140
380075	1.3485	1.0862	33.8962	31.6884	34.0197	33.2058
380081	***	*	26.8149	*	*	26.8149
380082	1.2959	1.1170	35.6708	35.7821	37.7268	36.4079
380089	1.3304	1.1170	34.6015	35.4850	37.0017	35.7207
380090	1.3419	1.2797	33.0990	35.5535	41.4540	36.7281
380091	1.4177	1.1170	39.9703	40.5066	39.7431	40.0820
380100	***	*	*	*	45.3882	45.3882
380101	1.8685	1.1170	*	*	*	*
390001	1.5671	0.9642	23.6075	24.3251	25.4188	24.4578
390002	1.3393	0.8613	24.7867	25.0860	25.9827	25.3000
390003	1.2164	0.9642	23.3672	24.5099	26.2872	24.7254
390004	1.6102	0.9161	24.4068	25.2424	26.5054	25.3615
390006	1.9516	0.9161	26.8581	28.6926	30.9914	28.9690
390008	1.1400	0.8393	22.8042	22.6297	22.9417	22.7923
390009	1.8056	0.8725	26.7462	26.7234	29.0286	27.5290
390010	1.1909	0.8613	24.5785	24.8196	26.0966	25.1628
390011	***	*	21.4856	20.2291	*	20.8697
390012	1.1860	1.0949	30.7542	32.4856	34.2004	32.4301
390013	1.3643	0.9161	25.0037	26.2323	28.3039	26.5756
390016	1.2421	0.8575	23.2095	24.3488	26.1802	24.5419
390019	1.1202	0.9642	24.0538	25.7515	25.3185	24.9937
390022	***	*	30.3565	29.6308	*	29.9808
390023	1.2628	1.0949	35.4452	34.7787	36.2618	35.4929
390024	***	*	33.5186	38.8750	37.4815	36.5109
390025	0.4304	1.0949	19.1362	20.3878	*	19.7743
390026	1.3104	1.0949	31.8512	31.8309	36.0608	33.1373
390027	1.6507	1.0949	35.5692	39.2158	40.9110	38.5961
390028	1.5805	0.8613	27.1869	27.1451	29.6218	27.9538
390030	1.1867	0.9080	23.6063	24.6343	26.5678	24.9946
390031	1.2119	0.9080	26.2654	27.2033	26.1258	26.5391
390032	1.2693	0.8613	23.9466	24.5243	25.3756	24.6177
390035	1.1793	1.0949	28.4564	29.5417	27.2130	28.3547
390036	1.4871	0.8613	21.6358	24.4917	26.1956	24.0505
390037	1.4579	0.8613	25.4290	25.2296	27.0788	25.9187
390039	1.2528	0.8333	22.0208	23.2300	22.1531	22.4614
390041	1.3061	0.8613	22.9814	24.2257	25.1190	24.1291
390042	1.3629	0.8613	28.3633	28.0996	29.6213	28.7208
390043	1.1963	0.8333	23.2378	24.2087	24.3590	23.9396
390044	1.5577	1.0733	28.7758	29.4057	29.9959	29.4221
390045	1.4855	0.9642	23.9343	24.6495	25.8800	24.8311

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
390046	1.6668	0.9797	29.6574	30.5115	32.5273	30.9445
390048	1.1237	0.9161	28.5342	28.3152	28.4563	28.4342
390049	1.5809	0.9642	29.6121	30.7431	31.0290	30.4803
390050	2.0173	0.8613	27.2599	27.3481	29.6715	28.1215
390052	1.1459	0.8380	24.9510	25.1462	26.3700	25.5007
390054	***	*	24.4435	27.4805	27.5696	26.3439
390056	1.1116	0.8369	23.5077	23.5821	24.7038	23.9363
390057	1.3310	1.0949	29.7982	30.9198	31.0279	30.6018
390058	1.3061	0.9161	26.9546	27.7296	29.6620	28.1048
390061	1.5160	0.9797	29.1318	30.0597	30.9208	29.9897
390062	1.1404	0.8333	21.2999	21.0713	22.8856	21.7738
390063	1.8383	0.8725	26.4998	26.8381	28.3987	27.2934
390065	1.3170	1.0974	27.6249	29.5654	31.8841	29.7498
390066	1.3875	0.9161	25.9645	25.4407	29.0033	26.8311
390067	1.7879	0.9161	29.7234	30.6128	32.2891	30.8953
390068	1.3409	0.9797	26.7358	29.0962	29.6984	28.5421
390070	1.3537	1.0949	33.3185	34.4935	34.5501	34.1267
390071	1.0067	0.8333	24.6462	24.8467	26.3830	25.3090
390072	1.0690	0.9642	25.3029	26.2568	28.8145	26.7359
390073	1.6912	0.8333	25.7822	26.4083	27.0876	26.5004
390074	***	*	23.6500	25.4098	*	24.5222
390076	1.3187	1.0949	31.8500	32.7671	33.9908	32.8750
390079	1.8477	0.8537	22.5607	24.4452	26.0199	24.3381
390080	1.3935	1.0949	28.7063	29.2645	31.6210	29.8848
390081	1.2384	1.0949	31.7569	33.6247	36.4788	33.9951
390084	1.1283	0.8333	23.2039	24.3372	24.3191	23.9423
390086	1.6174	0.8333	23.5141	25.0992	24.7454	24.4728
390090	1.9163	0.8613	27.3528	27.0122	30.1256	28.1619
390091	1.1768	0.8575	21.7010	23.3562	23.2118	22.7621
390093	1.1903	0.8575	22.6082	22.6023	23.8846	23.0315
390095	1.1696	0.9642	22.6150	24.6290	25.3859	24.2115
390096	1.6038	1.0733	28.8258	28.6055	30.3910	29.2651
390097	1.2503	1.0949	26.1741	27.9858	28.1285	27.3790
390100	1.6435	0.9797	30.0132	30.0234	32.7836	31.0014
390101	1.2845	0.9586	23.1497	24.8377	25.9850	24.6920
390102	1.4756	0.8613	24.8369	24.4589	25.5336	24.9498
390103	***	*	20.5741	20.4446	*	20.5090
390104	1.1048	0.8333	19.2326	19.6630	20.4552	19.7624
390107	1.5869	0.8613	24.1159	24.6565	25.6790	24.8682
390108	1.2071	1.0949	27.8171	28.5928	34.3066	30.2004
390110	1.5938	0.8613	27.7311	25.3407	25.7159	26.1484
390111	2.1585	1.0949	34.2990	34.8756	37.7322	35.7285
390112	1.3263	0.8333	20.2380	21.5439	18.4185	19.9666
390113	1.3338	0.8575	23.3686	24.2593	24.8669	24.1709
390114	1.6383	0.8613	26.9620	27.9184	28.5336	27.8266
390115	1.4264	1.0949	29.6905	30.8063	32.5058	31.0531
390116	1.2616	1.0949	32.2513	33.2562	33.9295	33.1586
390117	1.1772	0.8335	20.7821	21.5038	22.2327	21.5359
390118	1.1741	0.8333	20.5614	21.8917	23.6535	22.0853
390119	1.2813	0.9642	23.0928	24.3245	25.3907	24.2634
390121	***	*	25.4826	*	*	25.4826
390122	1.1069	0.8386	23.1866	23.3220	24.6434	23.7142
390123	1.1989	1.0949	32.4528	34.0062	35.1244	33.8969
390125	1.2501	0.8355	22.4033	22.8816	24.0199	23.1236
390127	1.3566	1.0949	31.9091	33.6557	33.1227	32.8966
390128	1.2329	0.8613	24.1628	24.1390	25.1858	24.5042
390130	1.2051	0.8333	23.0592	23.2504	30.7083	25.4530
390131	1.3539	0.8613	23.0577	23.5783	27.7146	24.8839
390132	1.4532	1.0949	29.6396	31.1168	30.0751	30.2701
390133	1.7588	0.9642	31.1083	32.9812	33.0604	32.4225
390136	***	*	23.9813	*	*	23.9813
390137	1.4546	0.9642	24.2878	26.1457	26.9156	25.8037
390138	1.1933	0.9161	25.3410	27.4231	27.7565	26.8686
390139	1.3513	1.0949	34.1447	34.0836	36.5001	34.9231
390142	1.5277	1.0949	33.8224	34.5773	33.3509	33.9114
390145	1.5634	0.8613	24.6672	25.6980	26.9212	25.7786
390146	1.1821	0.8355	22.6752	25.1805	23.9878	23.9699
390147	1.3777	0.8613	26.8522	28.6606	29.0995	28.1888
390150	1.1316	0.8364	22.8228	22.7668	22.6483	22.7485
390151	1.3423	1.0974	29.9254	31.4067	31.8967	31.1176
390153	1.3709	1.0949	32.8234	33.2427	36.0287	34.1055
390154	1.2181	0.8333	22.8391	23.3559	23.9785	23.4011
390156	1.3560	1.0949	32.2688	32.8999	33.7057	32.9638
390157	1.3263	0.8613	21.5923	22.1112	23.0989	22.2739
390160	1.3333	0.8613	24.0208	22.9696	25.2043	24.0533
390162	1.5038	1.1544	35.5057	34.5809	35.1844	35.0927
390163	1.2348	0.8613	23.2055	22.8341	24.8761	23.6457
390164	2.1316	0.8613	26.3087	27.1950	29.7778	27.7690

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
390166	***	*	20.9272	23.3255	28.2178	23.9473
390168	1.4936	0.8613	26.1365	26.9816	27.3674	26.8311
390169	1.4117	0.9642	26.5514	26.2643	26.6063	26.4727
390173	1.2356	0.8333	23.9927	25.6455	27.6039	25.7724
390174	1.6826	1.0949	34.2069	34.8999	35.1118	34.7519
390176	1.1316	0.8613	23.9779	24.1247	*	24.0545
390178	1.3243	0.8905	22.6006	23.1452	23.9166	23.2195
390179	1.4258	1.0949	28.0688	30.1219	31.5498	29.9844
390180	1.3924	1.0949	34.9832	35.5291	38.2997	36.3046
390181	***	*	25.9871	26.6021	27.8833	26.8195
390183	1.1442	0.8333	27.0122	27.8358	28.2211	27.6773
390184	1.1122	0.8613	22.7451	23.9736	23.9973	23.5374
390185	1.2585	0.9797	25.4256	27.1119	25.5318	25.9883
390189	1.1469	0.8333	22.6796	23.6215	23.4902	23.2867
390192	1.0397	0.9642	20.5459	23.6171	23.7958	22.6677
390194	1.2048	0.9642	27.5890	26.3152	23.7367	25.7642
390195	1.6572	1.0949	34.2980	34.5594	37.2504	35.3808
390196	1.6451	*	*	*	*	*
390197	1.4166	0.9642	26.8270	27.2455	27.7303	27.2757
390198	1.1271	0.8725	20.5979	20.4350	21.0861	20.7064
390199	1.1363	0.8333	22.3224	23.0046	24.5469	23.3010
390201	1.3573	0.9503	27.0054	27.3542	28.5668	27.6595
390203	1.5284	1.0949	29.4930	29.1370	30.7244	29.8050
390204	1.2928	1.0949	29.5251	30.7346	32.0242	30.7960
390211	1.2850	0.8905	25.1689	26.5052	27.7875	26.4997
390217	1.2307	0.8613	23.5879	24.1886	26.2706	24.6774
390219	1.3587	0.8613	25.4886	26.1196	26.3263	25.9701
390220	1.0763	1.0949	28.9128	30.7435	32.0891	30.6092
390222	1.2662	1.0949	30.9464	31.7361	32.7077	31.8280
390223	1.9832	1.0949	30.2523	34.3280	36.5784	33.7268
390225	1.1816	0.9797	27.5803	27.2555	26.3642	26.9597
390226	1.7115	1.0949	32.6658	32.6508	35.4683	33.6054
390228	1.3605	0.8613	23.9845	24.2242	25.5120	24.5899
390231	1.4010	1.0949	30.9339	32.8353	35.2312	33.0480
390233	1.3801	0.8333	25.6904	27.2597	28.3660	27.1368
390236	0.9816	0.8336	22.1144	23.1290	24.5574	23.2396
390237	1.5871	0.9642	27.4944	28.4337	29.9748	28.6624
390246	1.1781	*	25.1956	26.0179	*	25.6189
390256	2.0015	0.9161	28.0617	28.8970	28.5887	28.5308
390258	1.4644	1.0949	30.4142	31.7164	32.0551	31.4310
390263	1.5202	0.9642	28.5864	29.9850	30.2069	29.6617
390265	1.5374	0.8613	24.0675	25.0166	27.7795	25.6291
390266	1.1886	0.8905	20.8789	22.2228	23.0142	22.0428
390267	1.2765	0.8613	24.2428	24.8309	25.7571	24.9527
390268	1.4057	0.8786	25.6643	26.7342	28.4200	27.0044
390270	1.6182	0.9797	24.9510	26.5010	27.0301	26.2573
390272	0.6048	1.0949	*	*	32.9918	32.9918
390278	0.6015	1.0949	26.6664	28.6323	28.8318	28.0569
390285	1.4914	1.0949	36.7163	37.6669	38.4703	37.6186
390286	1.2122	1.0949	29.5281	31.3393	31.7337	30.8710
390287	***	*	39.3176	42.2401	*	40.3959
390288	***	*	30.9701	*	*	30.9701
390289	***	*	30.7583	*	*	30.7583
390290	1.8018	1.0949	38.3776	41.1426	47.7663	42.3002
390302	0.8675	1.0949	*	*	*	*
390303	***	*	27.5580	*	*	27.5580
390304	1.2937	1.0949	30.4832	32.1633	33.4134	32.1090
390305	***	*	*	29.3217	*	29.3217
390306	***	*	*	40.3789	*	40.3789
390307	2.0387	0.8905	*	24.5393	22.9474	23.6870
390308	***	*	*	36.1737	*	36.1737
390309	***	*	*	37.8924	*	37.8924
390310	***	*	*	44.3991	*	44.3991
390311	***	*	*	*	49.9027	49.9027
390312	1.2872	1.0949	*	*	51.3372	51.3372
390313	1.1630	0.9080	*	*	*	*
390314	1.9352	0.9642	*	*	*	*
390315	1.7233	0.8613	*	*	*	*
390316	1.8448	0.9492	*	*	*	*
390317	0.7628	1.0949	*	*	*	*
390318	1.0143	0.9642	*	*	*	*
400001	1.3297	0.4388	13.9386	14.9151	15.4249	14.7738
400002	1.9377	0.4107	15.3833	12.9440	12.9793	13.6878
400003	1.3772	0.4107	13.9258	15.7906	14.6859	14.8163
400004	1.2149	0.4388	12.0923	12.5928	13.5197	12.7363
400005	1.2533	0.4388	10.3505	11.1152	11.7590	11.0791
400006	1.1625	0.4388	8.1841	8.1381	*	8.1610
400007	1.1609	0.4388	11.8203	12.0743	10.4934	11.4512

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
400009	0.9811	0.3126	9.3834	9.5114	10.1212	9.6760
400010	0.9080	0.3298	9.8132	10.7993	10.4206	10.3257
400011	1.1071	0.4388	9.6641	8.5503	9.4068	9.2137
400012	1.4868	0.4388	12.3362	10.1156	*	11.0797
400013	1.3647	0.4388	11.1414	11.4222	12.3073	11.6478
400014	1.3826	0.3882	10.5286	9.9395	12.3301	10.8954
400015	1.4611	0.4388	13.7043	22.2017	21.9225	18.9477
400016	1.4695	0.4388	16.6472	16.1931	17.9107	16.9081
400017	0.8958	0.4388	10.3123	9.9185	10.0590	10.0982
400018	1.1074	0.4388	11.9184	12.3942	13.1572	12.5003
400019	1.5139	0.4388	12.8380	14.7133	15.2364	14.0765
400021	1.3617	0.4630	14.4549	13.9217	14.9779	14.4495
400022	1.4493	0.4107	14.9089	15.3625	15.2124	15.1641
400024	0.8933	0.3882	10.8439	12.6226	13.7215	12.2509
400026	1.1336	0.3126	9.9262	7.1179	8.9064	8.4876
400028	1.1913	0.4107	11.3260	10.6711	9.6941	10.5465
400032	1.1453	0.4388	10.3736	10.7141	10.7844	10.6282
400044	1.4874	0.4107	14.6420	11.3551	12.1393	12.5279
400048	1.3115	0.3126	9.6416	9.6860	10.5176	9.9690
400061	2.2000	0.4388	18.1303	18.0093	17.4504	17.8502
400079	1.2270	0.3298	9.5296	10.4599	10.6127	10.2201
400087	1.3361	0.4388	11.0377	11.4162	12.0034	11.4591
400098	1.3454	0.4388	13.8034	13.7878	12.8756	13.4676
400102	1.1903	0.4388	10.5879	12.1761	12.1257	11.5564
400103	1.9277	0.3882	10.6971	11.7488	11.3314	11.2619
400104	1.2160	0.4388	11.4322	12.8404	12.6934	12.3297
400105	1.2760	0.4388	15.6626	16.9029	17.0463	16.5429
400106	1.1079	0.4388	13.4097	12.9272	14.8544	13.7090
400109	1.4318	0.4388	14.4386	14.8208	14.5713	14.6116
400110	1.2138	0.3345	11.1812	9.9278	10.8214	10.6068
400111	1.2269	0.3298	14.1718	10.2141	10.7892	11.5140
400112	1.2467	0.4388	10.1512	13.5177	11.2303	11.5795
400113	1.1770	0.4107	10.5305	10.9503	11.5948	11.0441
400114	1.1727	0.4388	10.1379	10.8913	11.6872	10.9258
400115	1.0803	0.4388	12.0713	9.6200	10.6809	10.8174
400117	1.1343	0.4388	9.5929	11.6258	12.1540	11.0020
400118	1.2644	0.4388	12.8692	12.7861	12.6199	12.7540
400120	1.3346	0.4388	13.4069	14.0817	14.5205	14.0201
400121	1.1126	0.4388	9.7427	9.1826	9.9713	9.6244
400122	1.8905	0.4388	8.9478	9.5814	10.0966	9.5555
400123	1.2352	0.3882	12.8317	12.5609	13.8601	13.0764
400124	2.7001	0.4388	17.2139	17.9140	19.1704	18.1030
400125	1.2074	0.4052	11.9787	13.5394	13.1078	12.8847
400126	1.2882	0.4630	14.1062	16.5726	*	15.3043
400127	2.0895	0.4388	17.8303	20.7775	*	19.5304
400128	1.0169	0.4388	*	12.3520	*	12.3520
410001	1.3143	1.1366	29.0877	30.0315	30.5865	29.9107
410004	1.3126	1.1366	29.4953	31.3023	35.2384	31.9958
410005	1.2532	1.1366	28.1141	31.4387	34.2846	31.1692
410006	1.3896	1.0667	30.1855	32.8456	33.9961	32.3410
410007	1.6123	1.1366	33.2896	32.0730	34.4774	33.2675
410008	1.3231	1.0667	30.9505	32.5889	33.6384	32.3892
410009	1.2367	1.0667	31.7300	32.8422	34.3427	32.9955
410010	1.1284	1.1366	32.0704	32.7379	34.9330	33.2768
410011	1.4939	1.1366	33.8781	30.1941	36.7668	33.5140
410012	1.5736	1.1366	33.6072	37.0299	36.5207	35.7411
410013	1.2032	1.1571	35.8075	41.0010	39.8659	38.8824
420002	1.5660	0.9535	29.5592	30.5111	31.2247	30.4477
420004	1.9785	0.9184	28.1455	28.9250	30.0764	29.0572
420005	1.1686	0.8588	25.0420	24.6968	26.5044	25.3755
420006	***	*	26.3293	27.7764	29.1404	27.7494
420007	1.6348	0.9315	26.8165	29.0901	28.9557	28.2952
420009	1.4150	0.9315	27.0147	29.9378	28.6648	28.5287
420010	1.1445	0.8588	25.1452	25.5710	26.5523	25.7619
420011	1.1811	0.9731	22.1787	25.5130	26.0585	24.6061
420015	1.3156	0.9731	24.1685	26.3499	27.4929	26.0293
420016	0.9718	0.8588	21.6266	22.5681	23.4323	22.5466
420018	1.8353	0.8960	25.6687	27.5563	29.0923	27.4862
420019	1.1038	0.8746	22.5489	25.4954	25.8119	24.4096
420020	1.3450	0.9184	28.4344	27.5000	29.2935	28.4131
420023	1.7184	0.9731	27.4589	28.9321	30.4492	28.9948
420026	1.8734	0.8960	27.8986	28.0647	29.5066	28.4734
420027	1.5782	0.9805	26.4472	28.5621	31.3797	28.7409
420030	1.3246	0.9184	27.8435	28.4433	30.3424	28.8727
420033	1.1836	0.9731	30.4162	31.1608	32.4287	31.3443
420036	1.2541	0.9428	23.8742	24.6505	26.3480	24.9671
420037	1.3444	0.9731	29.8321	30.9556	32.7124	31.1325
420038	1.2870	0.9731	24.6642	26.6435	27.1524	26.1472

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
420039	1.0548	0.8993	28.2220	26.5582	26.3127	26.9783
420043	1.1171	0.8745	24.0971	25.7951	25.8366	25.2419
420048	1.2737	0.8960	25.9610	26.9625	27.4353	26.8151
420049	1.2602	0.8670	26.0953	25.7060	28.0920	26.6563
420051	1.7177	0.8588	25.9056	26.4710	27.6130	26.6671
420053	1.2411	0.8623	23.2246	24.4793	25.4820	24.4055
420054	1.1192	0.8590	25.6779	25.6444	26.7900	26.0199
420055	1.0971	0.8588	24.0965	25.1738	25.3144	24.8608
420056	1.3511	0.8588	27.7250	28.4512	29.7774	28.7574
420057	1.2119	0.8588	24.9313	26.2489	27.7137	26.2671
420062	1.1082	0.9428	26.7467	25.9569	27.2263	26.6405
420064	1.2644	0.8670	24.3540	24.6507	25.0654	24.6908
420065	1.4204	0.9184	25.5483	26.8118	28.1896	26.8680
420066	0.9999	0.8588	25.1062	25.0932	20.5743	23.2330
420067	1.3729	0.8804	25.8561	26.5658	27.7167	26.7386
420068	1.3793	0.9567	25.6857	27.7315	28.0316	27.1436
420069	1.2067	0.8588	22.3445	23.7494	24.4656	23.5601
420070	1.3185	0.8960	24.7899	27.5988	27.6431	26.7226
420071	1.4354	0.9315	25.2862	27.6371	28.1099	27.0466
420072	1.1668	0.8588	17.8019	21.6587	20.7716	19.9751
420073	1.3847	0.8960	25.5204	26.1120	28.2671	26.7154
420078	1.8622	0.9731	29.5135	30.9001	32.8731	31.0942
420079	1.5095	0.9184	27.5439	28.6374	30.5981	28.9429
420080	1.4362	0.8804	28.6060	31.5670	32.8712	30.8894
420082	1.5176	0.9569	31.2671	33.9874	34.8864	33.3525
420083	1.4533	0.9315	26.4932	28.9007	29.6587	28.4201
420085	1.5950	0.9051	27.8386	29.1127	29.9085	28.9697
420086	1.4631	0.8960	28.0485	27.9523	29.6349	28.5681
420087	1.8117	0.9184	25.4697	26.8409	28.4632	26.9059
420089	1.3791	0.9184	28.1855	29.5862	31.7367	29.8353
420091	1.4556	0.8588	26.0592	27.2520	27.9062	27.0847
420093	***	*	28.0765	33.0474	*	30.2237
420098	1.2068	0.8588	30.7532	27.1939	27.6722	28.2074
420099	***	*	*	30.3089	*	30.3089
420100	***	*	*	*	29.2979	29.2979
420101	1.2082	0.8588	*	*	33.1995	33.1995
420102	1.7065	0.9731	*	*	*	*
430005	1.3354	0.9467	22.4111	23.8694	25.4385	23.9209
430008[6]	1.1164	0.9373	24.4277	26.0873	27.2275	25.9007

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
430012	1.3022	0.9344	24.0326	25.2030	27.0195	25.4029
430013[6]	1.2025	0.9373	25.9828	27.0427	28.4962	27.1842
430014	1.4124	0.8396	26.8752	27.9288	28.9295	27.9163
430015	1.1983	0.9344	23.6296	26.5787	28.0414	26.1014
430016	1.5978	0.9344	28.9376	32.8765	31.1336	30.9589
430027	1.7447	0.9344	26.6044	27.5759	29.2617	27.8489
430048	1.2682	0.9344	24.1969	25.1715	25.6428	25.0139
430060	0.9428	0.9344	13.2618	*	*	13.2618
430064	0.9849	0.9344	18.3125	16.4916	17.7334	17.4430
430077	1.7214	0.9582	25.8572	27.2116	31.1945	28.0488
430081	0.9424	1.4402	*	*	*	*
430082	0.8381	1.4402	*	*	*	*
430083	0.8441	1.4402	*	*	*	*
430084	0.9069	1.4402	*	*	*	*
430085	0.8878	1.4402	*	*	*	*
430089	1.8628	0.8750	22.3335	23.2467	24.9060	23.5435
430090	1.6005	0.9344	26.4862	29.0197	32.7395	29.5047
430091	2.2308	0.9467	25.1105	24.7274	26.7258	25.5168
430092	1.8871	0.8396	21.6478	21.9197	23.2527	22.2953
430093	1.3555	0.9467	27.5326	26.0232	24.7426	26.0961
430094	1.7383	0.8525	22.9091	23.2894	23.6624	23.3069
430095	2.4765	0.9344	31.3409	32.2326	32.5881	32.0547
430096	1.9114	0.8396	21.6713	24.6041	24.9623	23.8075
440001	1.1589	0.7994	21.2398	21.5755	25.4855	22.7822
440002	1.7216	0.8871	25.7434	26.3802	26.9133	26.3588
440003	1.3386	0.9430	28.4862	28.3557	26.0115	27.4330
440006	1.4562	0.9430	29.7146	31.5533	31.7394	31.0135
440007	0.9825	0.8162	19.9754	18.8273	22.7571	20.4816
440008	0.9673	0.8326	23.2126	27.3732	26.8857	25.9987
440009	1.1668	0.7943	23.9279	23.8148	24.4423	24.0657
440010	0.9491	0.7943	19.3669	19.6231	20.2497	19.7446
440011	1.3628	0.7943	23.6154	23.6698	24.8300	24.0422
440012	1.5037	0.7952	24.0169	23.7871	24.9261	24.2670
440015	1.8279	0.7943	25.0430	26.0601	27.1603	26.1002
440016	1.0462	0.8087	23.0350	24.5812	25.2512	24.2769
440017	1.7694	0.7952	25.0588	24.6707	26.1820	25.3220
440018	1.1090	0.7994	23.2107	25.0780	24.8568	24.4213
440019	1.6927	0.7943	25.3592	25.2230	26.2464	25.5929
440020	1.0908	0.8675	24.0995	24.7785	27.5626	25.4794

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
440024	1.1324	0.8711	23.9745	24.7705	26.2534	25.0629
440025	1.1247	0.8596	22.5407	22.6571	24.0289	23.0933
440026	***	*	28.0349	26.8153	28.4615	27.7731
440029	1.4645	0.9430	30.1204	31.2310	31.4652	30.9565
440030	1.2880	0.7943	23.7670	22.2607	22.3144	22.8057
440031	1.1271	0.7962	20.8964	22.6790	22.0711	21.8518
440032	1.1627	0.7943	19.7150	21.0380	23.8030	21.5387
440033	1.0635	0.7970	21.1087	22.7991	23.9792	22.5857
440034	1.6340	0.7943	24.6994	25.5061	25.9138	25.3767
440035	1.3931	0.9236	25.9613	26.2451	27.9217	26.6997
440039	2.1117	0.9430	29.8611	30.1790	30.1918	30.0902
440040	0.9214	0.7943	20.8637	20.8817	21.1288	20.9643
440046	1.3052	0.9430	27.9539	29.7377	30.7334	29.5277
440047	0.9611	0.8281	21.7892	22.8323	25.2150	23.3138
440048	1.8066	0.9289	29.4789	29.3187	30.6725	29.8255
440049	1.6753	0.9289	26.4772	28.8742	29.8623	28.4469
440050	1.2833	0.7952	24.4616	24.9694	26.3825	25.3090
440051	0.9335	0.8025	23.9253	23.4866	23.6560	23.6743
440052	1.0035	0.7943	22.8016	22.6128	24.4071	23.2436
440053	1.2706	0.9430	27.1197	27.8180	30.3907	28.4332
440054	1.0947	0.7943	23.5137	23.7931	21.9641	23.0468
440056	1.2125	0.7943	22.7820	23.2313	24.0635	23.3527
440057	1.1046	0.7964	16.6346	17.2176	19.3546	17.6959
440058	1.2002	0.7943	24.3522	26.0706	29.1184	26.6032
440059	1.4854	0.9236	28.3565	27.9467	29.4532	28.5995
440060	1.1402	0.8326	24.1024	25.0795	26.5867	25.2907
440061	1.1320	0.7943	23.9678	23.7360	25.4134	24.3714
440063	1.6189	0.7994	24.2566	23.9644	26.0763	24.7984
440064	0.9989	0.8842	23.7176	26.1246	26.7957	25.5518
440065	1.2419	0.9430	24.6169	25.8536	25.6111	25.3750
440067	1.1894	0.7943	24.4772	24.6553	26.0866	25.0971
440068	1.1819	0.8711	24.8146	26.1071	27.9082	26.2728
440070	1.0009	0.8052	20.0938	21.9166	23.2228	21.7289
440072	1.0393	0.8871	23.9563	25.7089	26.1661	25.2972
440073	1.4454	0.9236	26.3570	27.6154	27.5133	27.1573
440081	1.1687	0.7995	20.7125	20.7688	21.9681	21.1576
440082	1.9906	0.9430	30.6115	32.2479	32.8941	31.8799
440083	0.9576	0.7943	25.6099	23.6356	25.7074	24.9682
440084	1.1767	0.7968	18.6043	18.8699	19.8950	19.1301
440091	1.7554	0.8842	26.5687	28.1989	28.9697	27.9321
440102	1.0789	0.7943	20.7363	21.6762	22.1114	21.5219
440104	1.7770	0.8842	26.5741	27.9756	28.0905	27.5205
440105	0.9088	0.7994	22.9372	22.7962	23.7154	23.1605
440109	1.0164	0.8013	20.8924	21.4629	22.5878	21.7087
440110	1.1160	0.7943	20.9179	22.5929	23.6275	22.5564
440111	1.2833	0.9430	29.0975	28.8453	29.7461	29.2218
440115	0.9661	0.8281	23.1409	23.7107	24.9778	23.9354
440120	1.4948	0.7943	25.7161	24.7572	26.0621	25.5182
440125	1.6504	0.7943	22.8097	23.6328	24.0934	23.4919
440130	1.1218	0.7943	23.9955	25.1262	26.3192	25.1414
440131	1.1733	0.9289	25.6666	26.9649	28.3162	26.9311
440132	1.2282	0.7943	23.9410	24.0708	29.3377	25.7510
440133	1.7065	0.9430	29.2829	29.6093	32.5726	30.4223
440135	0.6898	0.7943	28.1925	27.7037	27.2094	27.7049
440137	1.0639	0.8681	22.2538	22.9547	24.6143	23.2376
440141	0.9917	0.7943	24.2406	24.9917	24.8737	24.6803
440144	1.2547	0.9236	23.9241	25.2293	26.3225	25.2061
440147	***	*	33.1756	34.8199	36.6978	34.8983
440148	1.1235	0.9236	23.9810	22.6188	28.0708	24.8108
440150	1.4315	0.9430	28.1012	29.4381	30.5513	29.3884
440151	1.1658	0.9236	27.1729	28.2203	28.6585	27.9979
440152	1.9950	0.9289	27.1877	28.4612	29.0588	28.2868
440153	1.0490	0.7943	23.6473	24.9388	23.3790	23.9597
440156	1.6461	0.8842	27.7309	28.5645	30.5161	28.9643
440159	1.4825	0.9289	26.9098	25.8289	27.2785	26.6813
440161	1.9248	0.9430	28.7074	29.9894	31.0667	29.9306
440162	***	*	27.6837	24.8705	24.6425	25.6907
440166	***	*	35.3064	*	*	35.3064
440168	1.0457	0.9289	28.1215	29.4028	31.3316	29.7030
440173	1.4354	0.7943	23.1167	24.0621	23.1370	23.4179
440174	0.8824	0.8255	25.4829	26.2087	27.4579	26.4459
440175	1.0111	0.7943	24.4848	24.7869	26.7705	25.3298
440176	1.3299	0.7952	22.9631	23.7695	24.9420	23.9379
440180	1.3444	0.7970	24.9841	22.3070	24.3376	23.7703
440181	0.9004	0.8308	24.8857	25.9450	26.4763	25.8147
440182	0.9536	0.8087	24.3302	25.0111	24.9899	24.8045
440183	1.6236	0.9289	29.1982	30.6599	30.9923	30.2954
440184	1.1303	0.7994	24.5786	23.3970	26.9086	24.9785

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
440185	1.1883	0.8711	25.3817	26.7473	26.3974	26.1845
440186	0.9920	0.9430	27.3733	28.9124	28.2840	28.1940
440187	1.0974	0.7943	24.0723	25.8238	27.4034	25.7688
440189	1.4146	0.8437	28.2621	28.8974	30.5786	29.1879
440192	1.0761	0.9236	27.3917	29.6272	30.6533	29.2794
440193	1.3106	0.9430	24.3622	25.2124	25.9726	25.1849
440194	1.2908	0.9430	29.4706	30.8593	32.3020	30.9194
440197	1.3967	0.9430	29.4275	30.1184	31.4317	30.3071
440200	0.9824	0.9430	21.1860	23.8654	23.8288	22.9589
440203	***	*	23.7451	17.9041	*	20.6007
440217	1.3765	0.9289	28.8641	29.8888	31.6650	30.1333
440218	2.0179	0.9430	23.7257	18.7275	36.9273	25.9474
440222	1.0096	0.9289	28.4664	29.0062	30.5148	29.3492
440225	0.8077	0.7943	24.8328	27.8860	26.9687	26.4729
440226	1.5696	0.7943	26.5831	27.1348	28.3199	27.3325
440227	1.3050	0.9430	*	30.7785	31.9119	31.3755
440228	1.5737	0.9289	*	28.3687	29.5372	29.0099
450002	1.4425	0.8836	28.0936	28.8521	29.7180	28.8522
450005	1.2418	0.8565	24.4933	24.5405	27.3473	25.4552
450007	1.3346	0.8917	23.0026	23.9490	24.4630	23.8047
450008	1.3767	0.8823	24.4701	24.5965	24.4372	24.5021
450010	1.5945	0.9142	25.5503	25.5582	30.1034	27.0862
450011	1.6551	0.9160	26.7418	28.5329	29.9302	28.4354
450015	1.5906	0.9816	29.9193	29.4919	30.3168	29.9215
450018	1.5342	0.9890	30.2383	30.7852	31.3131	30.7842
450021	1.8927	0.9816	29.5658	31.3107	31.7360	30.8759
450023	1.4132	0.8124	25.4450	25.5346	25.1683	25.3825
450024	1.5715	0.8836	26.9113	28.2047	27.3814	27.5118
450028	1.5776	0.9193	29.1438	29.5792	29.5689	29.4322
450029	1.6183	0.8785	25.0602	26.9361	28.6465	26.7642
450031	1.4439	0.9816	29.0824	30.3542	29.2141	29.5397
450032	1.2559	0.8378	21.5084	25.5785	26.3159	24.2727
450033	1.5964	0.9193	29.2468	27.8680	29.7668	28.9235
450034	1.5314	0.8565	26.5313	27.6929	29.6309	28.1127
450035	1.5410	0.9890	28.0668	28.8049	30.3369	29.0814
450037	1.5869	0.8667	26.6207	28.3403	28.2622	27.7354
450039	1.5943	0.9816	26.7503	28.2081	29.8145	28.2732
450040	1.7548	0.8681	25.4734	26.8412	28.5469	26.9591
450042	1.7467	0.8672	26.6382	26.5429	27.6131	26.9561
450044	1.6922	0.9816	31.0381	29.4293	32.9921	31.1706
450046	1.5786	0.8465	24.8947	25.5903	27.2439	25.9775
450047	0.8561	0.9193	21.8824	23.8457	24.9670	23.5092
450051	1.9265	0.9816	28.8829	29.9038	30.3976	29.7573
450052	0.9850	0.8124	22.6448	23.0007	24.3964	23.3482
450054	1.7903	0.8823	27.5399	26.5599	30.2211	28.0406
450055	1.0446	0.8124	22.9245	23.6382	24.1418	23.5763
450056	1.6850	0.9488	28.3092	31.4971	32.0902	30.6442
450058	1.5738	0.8917	26.6926	26.9918	27.7318	27.1594
450059	1.2991	0.8992	26.8325	27.3856	28.5645	27.5870
450064	1.5124	0.9816	26.8355	28.2786	29.0495	28.0423
450068	2.0493	0.9890	29.5876	30.5001	32.0372	30.7388
450072	1.2140	0.9890	25.8619	27.1081	28.0921	27.0436
450073	0.8914	0.8124	26.9446	26.1567	22.2322	25.0644
450076	1.6922	*	*	*	*	*
450078	0.8999	0.8124	21.4716	20.0758	20.7800	20.7563
450079	1.6790	0.9816	30.2420	30.5968	36.8936	32.4461
450080	1.2480	0.9816	27.9191	26.2439	26.8111	27.0304
450082	1.1594	0.8124	23.9025	24.2018	25.5654	24.5571
450083	1.7516	0.8870	27.4955	32.6462	30.2054	29.9870
450085	1.0822	0.8124	24.3637	25.6440	26.3610	25.4426
450087	1.3987	0.9816	30.0095	31.2668	32.6556	31.3370
450090	1.2605	0.8774	21.3837	21.8839	22.7822	22.0414
450092	1.2122	0.8124	24.9917	26.2781	28.2278	26.4939
450096	***	*	26.5103	28.1902	*	27.3122
450097	1.4586	0.9890	29.0142	29.8734	31.9782	30.2419
450099	1.3018	0.8851	31.3495	31.7829	29.8491	30.9853
450101	1.6152	0.8672	25.4409	26.7457	28.4220	26.8733
450102	1.7086	0.8870	25.6318	26.4161	27.3364	26.4786
450104	1.1856	0.8917	24.6169	28.8063	27.7851	26.9845
450107	1.5824	0.8836	27.6064	27.8177	29.0328	28.1655
450108	1.1912	0.8917	21.6557	19.3245	22.4293	21.1096
450119	1.3180	0.9053	27.8027	31.1026	34.4161	30.7688
450121	***	*	29.1296	27.7472	*	28.4439
450123	1.3318	0.8565	24.9674	26.2469	24.0433	24.9410
450124	1.7521	0.9488	28.2571	30.9140	31.9797	30.4259
450126	1.3993	0.9890	29.3768	30.5540	32.0370	30.6765
450128	1.2368	0.9053	25.1122	26.3296	28.3171	26.5699
450130	1.1973	0.8917	24.3295	24.3842	26.9208	25.2416

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
450131	***	*	25.9494	*	*	25.9494
450132	1.6337	0.9392	30.1620	31.9981	31.1361	31.0947
450133	1.5306	0.9528	28.4647	30.0648	30.9622	29.8085
450135	1.6392	0.9816	27.8983	30.1385	30.7909	29.6284
450137	1.6760	0.9816	31.4950	31.9644	35.7775	33.2281
450143	1.0287	0.9488	23.4592	23.6834	24.4346	23.8659
450144	1.0094	0.8683	26.2881	29.2987	31.1552	28.7444
450147	1.4566	0.8124	24.3562	24.7221	26.3032	25.1667
450148	1.2114	0.9816	27.0894	29.6777	30.0542	28.8677
450151	***	*	23.9558	26.2011	22.8768	24.2775
450152	1.2562	0.8823	23.3428	23.1056	24.3442	23.6081
450154	1.3300	0.8124	21.7237	22.9357	24.2582	22.9599
450155	1.1235	0.8124	21.7604	24.8052	24.8773	23.6643
450162	1.3283	0.8681	33.3285	32.9317	33.7823	33.3242
450163	1.0640	0.8178	24.1267	24.7857	27.0967	25.3189
450165	1.1443	0.8917	28.6490	29.1839	30.2236	29.3465
450176	1.4001	0.9053	23.1284	24.4338	25.8587	24.4748
450177	1.0905	0.8124	23.7624	24.4064	26.0895	24.7684
450178	0.9980	0.9120	27.8405	27.1184	28.5990	27.8379
450184	1.5687	0.9890	28.5399	29.5940	30.9726	29.6901
450187	1.2145	0.9890	28.3243	27.7374	29.2749	28.4476
450188	0.9241	0.8124	23.0595	23.2280	24.6823	23.6819
450191	1.1277	0.9488	26.5863	28.3937	31.1339	28.6339
450192	1.1180	0.8395	24.1186	26.4722	26.9884	25.8925
450193	2.0355	0.9890	34.4545	36.4793	37.1906	36.0660
450194	1.2637	0.8337	22.9605	24.3531	30.4381	25.7171
450196	1.4598	0.9816	24.0161	23.4577	25.4842	24.2969
450200	1.6018	0.8167	23.5012	25.6413	27.9843	25.4507
450201	0.9702	0.8124	23.2510	23.2800	22.5464	22.9963
450203	1.2118	0.9650	26.5237	27.8795	28.0986	27.5113
450209	1.8271	0.8965	27.5668	30.6146	31.9882	29.9989
450210	1.0180	0.8275	21.8722	22.5736	22.9055	22.4488
450211	1.3447	0.8667	28.4581	28.3770	28.8485	28.5697
450213	1.7937	0.8917	25.9169	26.8566	28.0307	26.9452
450214	1.2282	0.9890	27.4357	27.9913	28.2261	27.8834
450219	0.9663	0.8124	21.9207	23.9636	24.7274	23.5186
450221	1.1109	0.8124	19.3793	21.3721	20.7118	20.5037
450222	1.6856	0.9890	30.0314	30.3801	31.9255	30.7851
450224	1.3126	0.8870	26.8302	28.4382	28.7931	28.0125
450229	1.6537	0.8378	24.4450	25.1370	26.8039	25.3965
450231	1.6721	0.8965	27.1674	26.9783	27.0545	27.0675
450234	1.0202	0.8124	20.6889	20.4659	21.6799	21.1357
450235	1.0055	0.8124	23.5212	21.8967	23.8001	23.0638
450236	1.1337	0.8513	23.5426	22.9622	24.5942	23.6940
450237	1.6522	0.8917	25.7939	30.5885	31.2197	28.9564
450239	0.9774	0.8823	21.2586	19.1359	18.4234	19.4676
450241	1.0209	0.8124	20.8732	21.3641	28.4948	23.5112
450243	1.0024	0.8124	15.4510	17.2966	19.0180	17.2996
450253	0.9328	0.9890	24.2435	24.1056	22.9918	23.7732
450270	1.2212	0.8395	15.2190	19.8180	12.9999	15.5385
450271	1.2771	0.9650	22.7035	24.1269	23.9534	23.6290
450272	1.2088	0.9488	26.2576	27.0521	29.0917	27.4848
450280	1.4612	0.9816	29.9730	31.6575	34.9349	32.1874
450283	1.0893	0.9816	22.7938	24.1754	28.2094	24.8176
450289	1.4686	0.9890	32.2645	32.6533	32.6137	32.5230
450292	1.2736	0.9816	26.3242	26.8110	29.0243	27.3784
450293	0.8913	0.8124	23.6413	24.0827	24.1556	23.9553
450296	1.0440	0.9890	30.4324	31.5596	33.4545	31.7851
450299	1.6013	0.9160	27.5797	28.4171	29.4593	28.5050
450306	0.9802	0.8378	21.4558	22.9486	22.6818	22.3401
450315	2.4408	0.9816	37.1721	*	31.4227	33.9629
450324	1.5230	0.9816	25.1633	26.6093	27.9899	26.5493
450330	1.2541	0.9890	26.0771	27.1100	27.7419	26.9935
450340	1.4106	0.8500	25.0344	25.6791	29.6617	26.7074
450346	1.4337	0.8565	23.6072	23.8720	24.8434	24.1230
450347	1.2209	0.9890	28.7667	30.7825	28.5789	29.3914
450348	1.0017	0.8124	21.6787	21.0484	22.6828	21.8122
450351	1.2736	0.9650	26.5388	29.2560	29.9598	28.5847
450352	1.1060	0.9816	26.2281	27.2983	27.6480	27.0619
450353	***	*	27.0248	27.9576	*	27.5079
450358	1.9699	0.9890	31.4926	32.5922	33.9103	32.6884
450369	0.9277	0.8124	19.9148	22.8525	24.1953	22.2634
450370	1.2585	0.8359	25.5834	26.3235	29.0816	27.0012
450372	1.4544	0.9816	30.8886	29.5022	30.9345	30.4459
450373	0.9159	0.8124	24.8286	27.0726	27.4251	26.4837
450378	1.3151	0.9890	30.3883	32.2278	33.0583	31.9030
450379	1.4002	0.9816	33.7521	35.3807	35.0637	34.7101
450388	1.7009	0.8917	27.4328	27.8155	29.5386	28.2783

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
450389	1.1705	0.9816	25.6732	26.9638	26.8499	26.4866
450393	0.7662	0.9816	21.9347	*	39.0266	28.4489
450395	1.0721	0.9890	27.5189	26.7743	28.4272	27.6025
450399	0.8925	0.8124	20.3528	22.1731	20.6307	21.0335
450400	1.0655	0.8124	23.6358	26.2871	29.5020	26.1114
450403	1.3178	0.9816	29.0359	29.8643	31.7065	30.2589
450411	1.0062	0.8124	20.9372	21.5746	21.7877	21.4276
450418	***	*	28.4362	*	*	28.4362
450419	1.3156	0.9816	31.9966	34.2427	34.9972	33.8172
450422	1.2786	0.9816	34.4331	31.3454	32.4669	32.6986
450424	1.3568	0.9890	28.2463	30.7228	29.8290	29.5969
450431	1.6076	0.9488	26.3263	27.3926	28.5289	27.4182
450438	1.1492	0.8359	27.8659	26.5223	27.7734	27.3854
450446	0.7135	0.9890	17.0691	17.2871	15.4641	16.6068
450447	1.3542	0.9816	25.4200	26.5238	28.3724	26.7885
450451	1.0755	0.8660	24.6201	26.5477	25.8836	25.6949
450460	0.9426	0.8177	22.4227	24.9870	25.2165	24.1529
450462	1.7250	0.9816	29.6069	30.1466	30.6516	30.1373
450465	1.1258	0.9890	26.2759	27.0835	28.1853	27.2045
450469	1.4614	0.9816	26.3262	26.3445	31.1348	27.8729
450475	1.1940	0.8667	23.0942	24.5176	24.7037	24.0838
450484	1.4984	0.8667	26.7242	28.3913	27.7792	27.6353
450488	1.1174	0.8667	22.3981	23.7985	24.9109	23.7096
450489	0.9843	0.8124	23.4806	25.2680	26.9543	25.1940
450497	0.9960	0.8499	22.0918	23.1860	23.0712	22.7801
450498	0.9864	0.8124	18.6563	20.2475	20.6873	19.8493
450508	1.4511	0.8667	28.4471	27.2850	29.1519	28.3024
450514	***	*	26.3704	27.3043	26.4196	26.6988
450518	1.4410	0.8565	28.1755	29.1322	27.5880	28.1834
450530	1.2669	0.9890	29.1349	29.9720	30.7745	29.9526
450537	1.5138	0.9816	27.7757	28.7448	30.9167	29.1369
450539	1.2192	0.8191	23.1829	24.2151	25.0191	24.1140
450547	0.9744	0.9816	23.7820	34.3349	25.4140	27.1659
450558	1.7701	0.8378	26.9407	28.0655	28.7747	27.9454
450563	1.5309	0.9816	30.8332	32.0507	32.6875	31.9174
450565	1.3281	0.9650	26.7942	28.1741	27.4774	27.4809
450571	1.6223	0.8500	25.2108	27.4605	26.5313	26.3744
450573	1.0820	0.8250	22.0797	22.1492	24.6750	22.9819
450578	0.9615	0.8124	22.5167	25.0498	25.2478	24.2618

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
450580	1.0518	0.8124	22.3886	23.9004	25.9881	23.9918
450584	1.0826	0.8124	20.5257	22.5204	23.6044	22.1622
450586	1.0239	0.8124	18.9107	20.6699	18.3289	19.3040
450587	1.2254	0.8124	23.1202	25.0174	25.9364	24.6520
450591	1.1880	0.9890	25.7031	27.1744	27.9867	26.9272
450596	1.1854	0.9650	27.4011	29.8462	31.6590	29.6792
450597	0.9959	0.8124	24.7853	24.2586	24.8443	24.6217
450604	1.3401	0.8124	24.4743	25.9133	29.1543	26.5825
450605	0.9811	0.8465	20.9276	23.9332	14.8039	19.8573
450610	1.6030	0.9890	27.7317	28.3713	30.5977	28.8800
450615	0.9984	0.8157	21.8442	24.1902	22.6331	22.8682
450617	1.5832	0.9890	28.0225	28.8323	30.2923	29.0544
450620	0.9657	0.8124	18.6183	20.3723	21.2535	20.0801
450630	1.5095	0.9890	29.1462	29.8431	31.8014	30.2299
450634	1.6212	0.9816	28.7312	30.3274	31.8008	30.2941
450638	1.6006	0.9890	30.6572	32.4911	33.3237	32.0997
450639	1.4824	0.9816	30.4019	32.6255	34.3754	32.4480
450641	0.9826	0.8499	19.4389	20.2483	21.7292	20.4548
450643	1.3353	0.8785	22.7355	24.4999	27.2538	24.7940
450644	1.5457	0.9890	29.7918	30.7815	31.6874	30.7923
450646	1.4522	0.8836	25.6313	26.8060	27.4631	26.6298
450647	1.8759	0.9816	30.6924	32.4236	34.1016	32.4022
450651	1.5363	0.9816	30.4484	31.9261	33.6498	32.0236
450653	1.1587	0.8124	25.2144	26.1756	26.5361	25.9887
450654	0.9051	0.8124	21.5002	22.5447	25.0755	23.0147
450656	1.4209	0.8667	25.5050	28.1493	29.7290	27.7371
450658	0.9793	0.8124	22.2293	24.7856	22.7090	23.2039
450659	1.4013	0.9890	31.5024	34.2380	34.2657	33.2718
450661	1.4595	0.9392	30.2610	30.0751	29.2381	29.8382
450662	1.6467	0.9193	29.0535	29.0532	30.9630	29.6832
450668	1.5422	0.8836	28.8635	30.6114	30.2083	29.8666
450669	1.2197	0.9816	27.9796	30.2374	32.1244	30.1390
450670	1.4377	0.9890	25.9638	26.4266	26.2954	26.2320
450672	1.8339	0.9816	30.1191	31.8420	33.0858	31.7663
450674	0.9478	0.9890	28.7101	29.8971	31.9316	30.1858
450675	1.4560	0.9816	28.9005	30.9562	32.6380	30.8662
450677	1.3165	0.9816	25.9555	27.2760	27.1603	26.8129
450678	1.4190	0.9816	31.1563	33.3386	33.5513	32.6562
450683	1.2013	0.9816	27.4925	21.1737	24.8440	24.2911

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
450684	1.2816	0.9890	29.3025	30.2139	31.2765	30.2646
450686	1.6151	0.8681	24.2331	25.8530	26.4871	25.5762
450688	1.2724	0.9816	26.8599	26.9897	29.4393	27.7082
450690	1.3405	0.8870	26.5528	26.1743	30.0577	27.4942
450694	1.1748	0.8124	23.9961	24.0031	27.0862	24.8820
450697	1.4746	0.8917	24.8667	26.4132	28.3002	26.4751
450698	0.9155	0.8251	20.0955	21.5742	23.3062	21.6142
450702	1.6144	0.8667	26.8384	26.3696	27.1318	26.7841
450709	1.3968	0.9890	26.8146	27.1077	31.3239	28.4264
450711	1.4833	0.9053	26.7472	27.5622	28.1040	27.5207
450713	1.5561	0.9488	28.8285	29.4980	30.4933	29.6232
450715	1.3145	0.9816	17.3991	17.0235	*	17.2098
450716	1.4084	0.9890	32.3960	33.7096	33.9926	33.3809
450718	1.4664	0.9488	27.3215	28.1560	29.7609	28.4475
450723	1.4497	0.9816	28.5103	30.1704	31.0481	29.9622
450730	1.3786	0.9816	31.3324	32.7293	32.8920	32.3012
450742	1.1753	0.9816	27.2023	30.0583	30.4204	29.2920
450743	1.4525	0.9816	28.3362	28.4736	29.5098	28.8200
450746	0.8769	0.8124	20.6343	22.7873	23.3484	22.2429
450747	1.1962	0.8870	23.8314	25.8175	28.3935	25.8477
450749	0.9370	0.8124	20.0487	22.1562	23.9269	21.9555
450751	***	*	18.7456	21.4223	*	20.1469
450754	0.9447	0.8124	22.1819	24.7797	22.8572	23.2196
450755	0.9660	0.8400	19.8988	22.2006	24.7428	22.1319
450758	***	*	28.7342	28.2803	28.3305	28.4888
450760	1.0061	0.8836	24.7489	25.1637	23.7157	24.5608
450766	2.0281	0.9816	30.8004	30.2341	31.2084	30.7532
450770	1.1699	0.9488	24.1647	24.3244	23.6093	24.0132
450771	1.7112	0.9816	30.7105	32.0500	32.5014	31.7661
450774	1.7639	0.9890	27.2080	25.7436	27.5065	26.8207
450775	1.3931	0.9890	28.1428	29.8230	31.6656	29.9055
450779	1.2875	0.9816	29.9674	31.8403	32.0770	31.3358
450780	2.5251	0.8917	26.7611	27.0084	28.5560	27.4513
450788	1.5301	0.8465	26.2840	28.3759	29.7667	28.1306
450795	1.1736	0.9890	25.2007	32.9803	43.8574	34.0301
450796	1.8173	0.8965	36.4073	37.6274	39.4762	37.9827
450797	1.2450	0.9890	24.8950	24.8598	26.0302	25.2374
450801	1.4993	0.8167	24.6328	23.6072	25.6379	24.6374
450803	1.2115	0.9890	28.9235	29.0106	28.7041	28.8866
450804	2.0320	0.9890	27.8775	29.1282	31.1891	29.4377
450808	1.8935	0.9488	21.9793	23.0312	29.6476	24.9247
450809	1.6569	0.9488	26.4223	27.3080	29.4696	27.7563
450811	1.7205	0.9053	27.2584	31.2208	31.3007	29.7758
450813	1.1338	0.8917	20.1710	22.9289	26.5803	23.2369
450820	1.4208	0.9890	31.4666	33.9030	34.7445	33.5477
450822	1.3260	0.9816	32.2968	32.2145	34.4060	33.0005
450824	2.6720	0.9488	31.2375	33.3653	31.8413	32.1653
450825	1.4725	0.9053	20.6457	25.1521	25.8006	23.7852
450827	1.4431	0.9142	23.7554	24.1984	24.3659	24.1146
450828	1.3767	0.8124	24.4740	24.8236	26.9553	25.5740
450829	***	*	20.6016	19.5842	*	20.0933
450830	1.0106	0.9120	28.5902	27.8005	28.4007	28.2671
450831	0.9898	0.9890	23.3880	23.9467	24.4141	23.8676
450832	1.3192	0.9890	26.5229	27.3290	28.1389	27.3880
450833	1.1878	0.9816	27.0133	27.9649	29.0256	28.0118
450834	1.6108	0.9160	20.9607	27.4844	26.7253	24.5170
450838	1.0752	0.8250	19.5754	18.9620	19.2949	19.2973
450839	0.9683	0.8124	25.8222	27.2199	27.5330	26.8419
450840	1.2859	0.9816	30.1743	32.2538	32.4162	31.7003
450841	1.9116	0.9193	20.9410	20.9424	24.4389	22.2257
450844	1.3780	0.9890	30.7887	33.7978	33.0758	32.7256
450845	1.8834	0.8836	29.4933	29.9265	28.5039	29.2852
450847	1.2560	0.9890	28.5548	29.7356	30.7431	29.7038
450848	1.2905	0.9890	29.5355	30.5546	31.1476	30.4220
450850	1.5769	0.9528	21.9266	31.9606	27.2653	26.5519
450851	2.3662	0.9816	32.6950	35.1102	32.8377	33.5041
450853	1.7347	0.9816	36.1169	37.1043	38.3600	37.3460
450854	***	*	27.1868	*	*	27.1868
450855	1.6263	0.9193	30.8855	32.6916	30.7353	31.4217
450856	2.0963	0.8917	39.0865	37.7362	35.5006	37.3579
450857	***	*	30.4632	*	*	30.4632
450860	1.8529	0.9890	24.0171	29.1075	33.3404	29.3087
450861	***	*	34.9290	*	*	34.9290
450862	1.5775	0.9890	31.2224	31.8095	33.7962	32.2138
450863	***	*	24.8825	*	*	24.8825
450864	2.1884	0.8870	23.3765	24.5049	25.3535	24.5423
450865	1.0998	0.9488	29.1763	29.9559	31.9200	30.4459
450866	***	*	15.2959	*	*	15.2959

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
450867	1.1598	0.9488	28.2289	29.5879	31.4953	29.7815
450868	1.7418	0.9392	27.9579	25.3486	27.7501	27.0787
450869	2.1445	0.9053	22.6253	26.1616	28.7422	27.5510
450870	***	*	37.4364	*	*	37.4364
450871	1.8776	0.9488	*	28.9150	32.3990	30.6348
450872	1.3772	0.9816	*	27.2833	31.7345	29.8435
450873	***	*	*	14.8821	*	14.8821
450874	1.6548	0.9816	*	34.6083	35.6839	35.2084
450875	1.7324	0.8965	*	23.2763	23.2962	23.2869
450876	1.9271	0.8681	*	28.4343	30.3515	29.4584
450877	1.4989	0.8836	*	26.1867	29.2353	27.6979
450878	2.5647	0.8917	*	31.6750	33.6269	32.6709
450879	1.3352	0.8785	*	35.5672	36.4874	36.0748
450880	1.5512	0.9816	*	35.9572	32.6713	34.0919
450881	***	*	*	24.5464	*	24.5464
450882	***	*	*	26.6910	*	26.6910
450883	2.4493	0.9816	*	35.2646	37.1525	36.2400
450884	1.0279	0.8716	*	27.8213	23.5799	25.5505
450885	1.4524	0.9816	*	34.1148	36.0954	35.1492
450886	1.5017	0.9816	*	*	30.1571	30.1571
450887	***	*	*	*	25.5590	25.5590
450888	1.7096	0.9674	*	*	28.5995	28.5995
450889	1.5530	0.9816	*	*	35.6151	35.6151
450890	1.8250	0.9816	*	*	32.2000	32.2000
450891	1.4143	0.9816	*	*	39.0890	39.0890
450892	***	*	*	*	39.5333	39.5333
450893	1.4160	0.9816	*	*	36.2660	36.2660
450894	1.7932	0.9816	*	*	25.9441	25.9441
450895	***	*	*	18.4142	*	18.4142
460001	1.8326	0.9306	28.7150	30.0040	30.7040	29.8216
460003	1.5414	0.9245	31.4135	32.3427	29.6450	31.1486
460004	1.7715	0.9245	28.2040	29.6342	29.8773	29.2542
460005	1.5229	0.9245	25.0239	26.0731	29.4188	26.8380
460006	1.4489	0.9245	27.1392	28.3678	28.9653	28.1492
460007	1.3345	0.9193	27.1308	28.0035	29.1191	28.1211
460008	1.3382	0.9245	29.5907	31.5485	27.6906	29.5835
460009	1.9757	0.9245	27.2885	28.3836	29.4705	28.4464
460010	2.0996	0.9245	29.0063	30.4606	30.9813	30.1582
460011	1.3221	0.8363	24.4402	24.9677	26.5486	25.3374

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
460013	1.3900	0.9306	27.7381	29.2731	29.7252	28.9125
460014	1.1483	0.9245	28.2647	29.5963	30.6450	29.4787
460015	1.3543	0.8795	27.2506	29.1318	28.8014	28.4039
460017	1.5043	0.8746	24.3030	26.1589	28.7126	26.4252
460018	0.8921	0.8363	22.0517	22.8028	22.0935	22.3162
460019	1.1926	0.8363	24.3756	23.2202	25.1615	24.2511
460020	0.9177	*	18.5159	*	*	18.5159
460021	1.7960	1.1342	28.0291	29.5761	29.7397	29.2078
460023	1.2086	0.9306	26.9512	28.5884	28.9473	28.1985
460026	1.0733	0.9306	26.9295	27.9487	29.2775	28.0640
460030	1.1564	0.8363	23.5942	24.4218	26.8979	24.9669
460033	0.8688	0.8363	25.3422	26.6606	27.9108	26.6495
460035	0.9620	0.8363	20.6322	21.9115	23.8682	22.1205
460039	1.0970	0.8795	29.5651	30.4912	30.0677	30.0675
460041	1.3700	0.9245	26.4640	26.3807	26.7356	26.5291
460042	1.4992	0.9245	24.9454	26.8389	36.2903	28.7526
460043	0.9926	0.9306	28.2008	28.6668	29.5660	28.8145
460044	1.3233	0.9245	27.4928	28.7023	29.5079	28.5649
460047	1.6851	0.9245	28.2336	29.9990	31.0020	29.7629
460049	1.9911	0.9245	26.6702	28.4884	28.6267	27.9969
460051	1.4083	0.9245	27.0160	27.8841	28.1140	27.6926
460052	1.6508	0.9306	26.1629	27.1995	28.7455	27.4118
460054	1.6941	0.8795	24.9926	25.7870	26.3939	25.7332
460055	1.5286	0.9306	*	*	*	*
470001	1.2661	1.0282	28.3017	29.7540	32.2887	30.1255
470003	1.8790	1.1366	28.1137	30.1973	30.0535	29.4652
470005	1.3522	1.0255	30.7872	33.1981	33.9969	32.7072
470011	1.1591	1.0255	28.1330	29.6269	30.8742	29.5553
470012	1.2129	1.0255	26.0225	27.0751	29.8259	27.6841
470024	1.1459	1.0255	27.0394	26.6351	27.3106	26.9938
490001	1.0914	0.8651	23.2174	24.0368	24.6883	23.9912
490002	1.0163	0.8032	20.8609	21.7092	24.0672	22.0941
490004	1.2937	0.9415	27.1676	27.5890	28.8660	27.8914
490005	1.5721	1.0651	29.8215	30.5349	31.4909	30.6464
490007	2.0390	0.8845	27.6572	29.3098	30.7411	29.2730
490009	1.9938	0.9693	30.4722	28.4642	31.4260	30.0815
490011	1.5705	0.8845	26.4766	27.4764	28.8780	27.6276
490012	1.0083	0.8032	21.0605	22.9922	21.8322	21.9361
490013	1.3741	0.9659	24.7521	25.5560	27.3486	25.8960

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
490017	1.5024	0.8845	25.8216	27.5902	29.6784	27.7184
490018	1.3619	0.9415	26.2510	27.2644	27.8682	27.1385
490019	1.1538	1.0651	25.9885	25.8264	29.8891	27.1456
490020	1.2867	0.9169	27.3142	29.3468	30.6013	29.0713
490021	1.4632	0.8651	25.7938	27.0641	28.1254	26.9973
490022	1.4122	1.0651	32.2676	30.1203	31.7985	31.3748
490023	1.3288	1.0651	30.3416	30.9920	32.6308	31.3342
490024	1.7009	0.8856	26.1125	27.9689	29.0407	27.6973
490027	1.1151	0.8032	24.0288	23.0017	24.3834	23.7446
490032	1.9495	0.9169	25.2654	28.5897	28.0120	27.3522
490033	1.0968	1.0651	31.2922	31.8282	30.9910	31.3736
490037	1.2796	0.8032	24.7711	25.2859	26.2951	25.4678
490038	1.2248	0.8032	21.8509	22.6504	24.0852	22.8207
490040	1.5114	1.0651	32.6564	34.1841	35.6822	34.1611
490041	1.5631	0.8845	26.0897	27.1613	29.1244	27.4594
490042	1.3154	0.8718	24.4650	25.7333	26.6078	25.6263
490043	1.3369	1.0974	33.7096	35.8872	36.5982	35.4365
490044	1.4501	0.8845	23.3527	23.3793	24.1763	23.6467
490045	1.3435	1.0651	32.0937	30.3772	32.8774	31.7672
490046	1.5416	0.8845	26.6517	27.9604	29.3882	28.0346
490048	1.4338	0.8856	26.2828	27.0620	28.0320	27.1314
490050	1.5227	1.0651	31.3885	32.2993	31.1370	31.5954
490052	1.6681	0.8845	23.5973	25.0046	25.4179	24.6456
490053	1.1873	0.8032	23.3315	23.8004	24.6206	23.9164
490057	1.6375	0.8845	26.6898	27.4918	29.0700	27.7794
490059	1.6596	0.9169	27.3611	30.8669	32.1031	30.0798
490060	1.0189	0.8032	23.6113	24.3192	25.7765	24.5811
490063	1.8769	1.0974	31.3619	31.6069	34.1179	32.3888
490066	1.3933	0.8845	27.8250	29.5917	31.4298	29.7038
490067	1.2869	0.9169	24.9021	25.9497	26.7802	25.8589
490069	1.5350	0.9169	27.3181	29.1527	30.1482	28.8664
490071	1.4075	0.9169	29.7186	31.7061	33.7118	31.7120
490073	***	*	33.1829	34.5774	46.4210	36.1091
490075	1.3180	0.8453	25.2022	25.7323	27.3424	26.0799
490077	1.4177	0.9693	26.6806	28.1506	31.0016	28.6190
490079	1.2627	0.8934	25.3103	25.2340	24.2066	24.9044
490084	1.1427	0.8219	24.9007	25.7657	26.3234	25.6762
490088	1.0938	0.8651	24.1471	25.0619	26.0285	25.0933
490089	1.1011	0.8856	24.9438	25.9902	27.4587	26.1620
490090	1.0548	0.8032	25.1157	25.5418	27.0760	25.9186
490092	1.0766	0.8032	23.3439	25.7405	27.5277	25.4748
490093	1.5427	0.8845	25.6531	26.7886	28.7122	27.0741
490094	0.9733	0.9169	28.2165	28.9155	29.7990	28.9996
490097	1.0692	0.9169	26.5322	27.1470	27.4608	27.0696
490098	1.2905	0.8032	23.2782	25.1625	26.7152	25.0887
490101	1.4131	1.0974	31.2377	32.3695	32.9516	32.2116
490104	0.7712	0.9169	*	17.0548	19.0056	18.0437
490105	0.8337	0.8032	25.5329	26.3827	*	25.9379
490106	0.7733	0.8032	23.8334	25.7352	26.2318	25.2383
490107	1.4220	1.0974	32.2672	33.5430	35.0272	33.6816
490108	1.0555	0.8651	22.9076	23.3204	27.8717	24.7469
490109	0.9056	0.8845	22.7854	24.2296	21.6711	22.7835
490110	1.3588	0.8277	24.2887	24.9861	26.3089	25.2074
490111	1.1080	0.8032	22.1476	22.7336	26.4297	23.6183
490112	1.7306	0.9169	27.1932	29.0816	31.2549	29.1902
490113	1.2890	1.0651	31.8177	32.4547	34.7841	33.0728
490114	1.1450	0.8032	22.5255	22.1387	23.0533	22.5831
490115	1.2009	0.8032	22.4058	23.5718	23.2118	23.0491
490116	1.1703	0.8032	24.2258	24.3853	25.0351	24.5472
490117	1.1008	0.8032	19.6398	18.1138	20.3038	19.3439
490118	1.6348	0.9169	27.6749	29.0569	31.2407	29.3459
490119	1.3011	0.8845	26.5756	27.8866	29.5222	28.0197
490120	1.4558	0.8845	25.8795	25.9610	27.1990	26.3523
490122	1.5900	1.0974	32.0743	33.3719	35.2234	33.5751
490123	1.1432	0.8032	24.3490	24.2254	24.6011	24.3931
490126	1.1734	0.8032	23.6690	24.0908	25.3294	24.3549
490127	1.1178	0.8032	21.3735	23.5161	23.1399	22.6007
490130	1.2195	0.8845	23.9982	25.3352	25.9782	25.1174
490134	0.8238	0.8032	*	33.2405	31.1495	32.1164
490135	0.7505	0.8856	*	25.9998	27.2795	26.6430
490136	1.4425	0.9169	*	*	31.2911	31.2911
490138	1.9348	0.8651	*	*	*	*
500001	1.6026	1.1537	31.1605	33.0901	37.5323	33.7731
500002	1.3759	1.0142	27.6400	29.1448	30.1872	29.0196
500003	1.3946	1.1354	30.6939	32.1262	32.7983	31.8096
500005	1.8022	1.1537	33.5117	35.0997	36.0918	34.9349
500007	1.3510	1.1354	29.2869	30.5263	31.0313	30.3238
500008	1.9680	1.1537	32.6052	33.5666	34.7810	33.6739

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
500011	1.3825	1.1537	31.4514	32.6223	38.3979	33.9423
500012	1.7828	1.0142	30.0509	33.8101	33.1685	32.2301
500014	1.6625	1.1537	36.1380	36.5833	37.2698	36.6866
500015	1.4023	1.1537	34.5877	37.5724	40.8683	37.5969
500016	1.6726	1.1354	31.4905	32.9177	34.2828	32.9173
500019	1.2512	1.0273	30.5594	31.6242	33.8882	32.0659
500021	1.3083	1.1354	30.7927	32.4702	33.5610	32.3525
500024	1.7463	1.1439	32.6171	36.1647	37.4529	35.4272
500025	1.9211	1.1537	37.7952	40.6369	44.7105	41.0332
500026	1.4532	1.1537	32.8369	34.5881	35.5080	34.3342
500027	1.5002	1.1537	34.6164	39.2906	42.4974	38.7488
500030	1.6950	1.1418	32.4426	34.9174	36.9489	34.7856
500031	1.2670	1.1274	32.8833	33.2391	34.1651	33.4482
500033	1.2452	1.0142	30.6292	31.8891	32.6753	31.7844
500036	1.3309	1.0142	28.7096	30.5938	31.9164	30.4928
500037	1.0570	1.0142	28.1056	31.2654	29.1773	29.5205
500039	1.5633	1.1354	32.2245	33.5606	34.5739	33.5081
500041	1.4333	1.1431	30.3627	34.2017	36.9273	33.8445
500044	1.8919	1.0492	29.0214	31.0936	32.0743	30.6381
500049	1.3711	1.0142	27.7170	29.8189	30.8135	29.5158
500050	1.5084	1.1181	32.6751	33.7713	35.7254	34.0829
500051	1.7935	1.1537	32.5764	34.7610	36.4764	34.6043
500052	1.4573	1.1537	*	*	*	*
500053	1.2577	1.0142	28.2901	30.2811	28.5664	29.0324
500054	1.9720	1.0492	31.6595	32.5105	34.8114	32.9767
500058	1.6839	1.0142	30.7487	30.7034	32.6843	31.4282
500060	1.3646	1.1537	37.4869	38.7682	40.3040	38.9010
500064	1.8977	1.1537	31.6112	32.3581	34.7925	32.9466
500072	1.2611	1.0555	31.2000	32.5269	33.1148	32.3276
500077	1.4760	1.0492	31.6153	33.2223	34.3114	33.0364
500079	1.3737	1.1354	31.3280	32.5809	34.2420	32.6844
500084	1.2600	1.1537	30.2411	32.7883	33.3072	32.1170
500088	1.4727	1.1537	35.3770	36.7953	38.5194	36.8908
500108	1.6194	1.1354	31.8483	34.3872	35.8918	34.0331
500119	1.3806	1.0492	29.7028	31.2233	31.7125	30.8557
500124	1.4064	1.1537	32.3505	34.4790	36.3338	34.3972
500129	1.5751	1.1354	32.1102	34.4447	37.3189	34.6832
500134	0.5967	1.1537	27.2428	28.1374	28.9759	28.2252
500139	1.4897	1.1439	33.9739	34.6412	37.5709	35.2957
500141	1.2679	1.1537	31.3308	33.7532	34.2384	33.1523
500143	0.5890	1.1439	23.6766	25.3099	26.3893	25.1085
500148	1.2204	1.0142	26.4206	37.7830	24.6347	30.3562
500150	1.2646	1.1181	*	*	34.8480	34.8480
510001	1.9366	0.8610	25.2973	25.8693	26.7924	26.0192
510002	1.2687	0.8714	23.8921	23.7270	24.8846	24.1725
510006	1.3528	0.8614	24.9627	24.8777	26.6421	25.4777
510007	1.6779	0.9089	24.7264	27.1149	28.5783	26.8120
510008	1.3370	0.9234	26.3554	27.5241	27.4709	27.1403
510012	0.9584	0.7744	18.8984	20.8455	22.9038	20.8296
510013	1.1606	0.7620	22.7882	22.8779	22.9612	22.8739
510018	1.0727	0.8380	22.4597	23.1043	23.7736	23.1227
510022	1.8099	0.8380	26.9511	26.8328	27.6119	27.1384
510023	1.2565	0.8040	20.6435	21.0940	23.1461	21.6352
510024	1.7526	0.8610	25.5634	26.6621	31.1327	27.8377
510026	0.9842	0.7620	17.9908	19.2025	17.8275	18.3210
510029	1.3029	0.8380	22.7104	24.0872	25.3925	24.0185
510030	1.1512	0.7620	24.3936	24.2007	25.5600	24.7277
510031	1.4629	0.8380	23.2624	24.0237	26.7872	24.6115
510033	1.5983	0.8013	22.6189	24.0796	24.2839	23.6910
510038	1.0705	0.7620	20.6565	20.9180	21.7545	21.1107
510039	1.3739	0.7620	19.8751	20.4719	21.3819	20.5905
510046	1.3779	0.7779	22.1712	22.2935	24.7187	23.0447
510047	1.2029	0.8610	27.1214	27.6859	28.8794	27.9083
510048	1.1870	0.7620	18.8576	22.7930	23.6396	21.5409
510050	1.5369	0.8610	21.0772	21.9009	23.5794	22.1910
510053	1.0927	0.7620	22.3318	21.5338	22.6288	22.1643
510055	1.5624	0.9089	28.4615	29.4111	30.7382	29.5850
510058	1.3378	0.8013	23.9015	25.3248	24.8770	24.7027
510059	***	*	22.1435	20.8847	21.9053	21.6386
510062	1.2236	0.8380	26.2296	26.7066	27.7971	26.9092
510067	1.0951	0.7620	25.0437	25.2130	25.2248	25.1590
510070	1.2035	0.8380	23.5639	23.9742	25.4981	24.3387
510071	1.2815	0.7779	23.4508	23.2954	23.4553	23.4006
510072	1.0733	0.7620	20.5146	19.4370	20.2387	20.0446
510077	1.0374	0.8730	24.5010	25.9515	27.1611	25.8352
510082	1.1014	0.7620	19.9081	20.3279	21.1665	20.4933
510085	1.2011	0.8380	26.3877	26.2617	26.8133	26.4915
510086	1.0978	0.7620	19.8735	19.2606	20.1965	19.7687

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
510090	***	*	*	39.0787	39.0787	
520002	1.3018	0.9666	27.7705	29.0501	28.3413	28.3936
520004	1.4019	0.9776	27.6530	28.9857	30.9212	29.2476
520008	1.5702	1.0161	30.7553	33.8057	33.6774	32.7725
520009	1.6535	0.9401	27.4044	28.8591	29.6290	28.6366
520011	1.2888	0.9401	26.6268	28.0224	29.5024	28.0219
520013	1.4976	1.0953	29.0018	30.1834	32.1721	30.5213
520017	1.1193	0.9597	28.4699	29.3278	31.0537	29.6393
520019	1.3441	0.9401	28.6971	29.8640	30.2189	29.6447
520021	1.3249	1.0354	28.4182	29.1129	29.7809	29.1146
520027	1.4428	1.0161	31.4284	32.4137	33.5836	32.5086
520028	1.3963	1.0991	26.7260	28.0813	29.4694	28.3052
520030	1.6872	0.9791	29.4678	30.5724	31.6807	30.5745
520033	1.2247	0.9401	28.0662	29.0236	30.2631	29.1748
520034	1.2624	0.9401	26.1094	26.8886	28.1819	27.0617
520035	1.3577	0.9477	27.3276	28.1048	29.4076	28.2945
520037	1.7419	0.9666	30.1799	32.2144	32.2206	31.5565
520038	1.2066	1.0161	29.3134	29.6339	30.5267	29.8347
520040	***	*	29.1262	31.2038	35.9652	32.0427
520041	1.0807	1.1208	23.5495	25.3764	26.1586	25.0726
520044	1.3629	0.9477	27.3685	28.2382	28.6620	28.1198
520045	1.5908	0.9401	27.3336	29.2556	30.0856	28.8911
520048	1.5290	0.9401	26.8080	29.1870	30.1483	28.5894
520049	2.0443	0.9460	26.9851	28.0936	29.4238	28.1988
520051	1.5367	1.0161	31.9949	31.5974	32.4131	32.0747
520057	1.1891	0.9594	27.7528	29.1158	29.1597	28.6722
520059	1.3571	1.0027	29.5801	30.4491	31.1798	30.4098
520060	***	*	24.8638	*	*	24.8638
520062	1.3339	1.0161	28.8510	32.8584	32.7015	31.5745
520063	1.1686	1.0161	29.0993	30.3391	31.5200	30.3776
520064	1.5247	1.0161	30.3225	31.5723	33.1269	31.5786
520066	1.4186	0.9805	29.2088	31.0644	31.6793	30.6342
520070	1.6955	0.9597	27.6771	28.2059	30.0475	28.7368
520071	1.2148	1.0027	30.0262	30.6930	31.5452	30.8059
520075	1.6957	0.9460	29.2920	30.1582	32.2773	30.5489
520076	1.2239	1.0991	27.3335	27.4423	26.8943	27.2256
520078	1.4652	1.0161	29.9837	31.6606	32.0200	31.1775
520083	1.7220	1.1208	30.8826	32.7728	34.7230	32.8287
520087	1.7143	0.9776	28.5810	30.5659	31.9771	30.3899
520088	1.3608	0.9503	30.7450	30.6657	30.7482	30.7194
520089	1.5751	1.1208	33.8793	33.4098	34.9357	34.0817
520091	1.2761	0.9401	25.4593	27.3442	28.7180	27.1746
520095	1.2276	0.9594	30.4216	32.0381	33.2426	31.9196
520096	1.3674	1.0027	27.8896	29.5985	29.2895	28.9000
520097	1.3251	0.9460	29.1479	29.9998	30.5442	29.9125
520098	2.0064	1.1208	32.5785	36.5776	38.0993	35.8088
520100	1.3329	0.9805	29.3243	29.9458	31.7772	30.3560
520102	1.1952	1.0027	29.1680	30.7990	31.5756	30.5386
520103	1.5558	1.0161	30.3165	32.6269	34.5640	32.5636
520107	1.3431	0.9503	28.9878	29.4178	30.0354	29.4891
520109	1.0461	0.9401	24.7228	25.0697	25.9740	25.2673
520113	1.2650	0.9401	31.4708	33.3475	33.3040	32.7091
520116	1.2569	1.0027	27.9688	30.2156	31.6702	29.9799
520132	***	*	25.0006	27.3431	*	26.0481
520136	1.6348	1.0161	30.6522	32.1479	32.3504	31.7001
520138	1.8895	1.0161	30.8016	31.6581	32.5677	31.6770
520139	1.3347	1.0161	28.8870	30.4903	31.7086	30.3331
520140	***	*	31.0043	31.1315	*	31.0699
520152	***	*	29.7308	*	*	29.7308
520160	1.7786	0.9401	27.9548	29.5582	30.3052	29.2720
520170	1.4785	1.0161	30.4309	31.4710	31.7610	31.2280
520173	1.0885	*	29.2429	31.0599	*	30.1478
520177	1.6063	1.0161	31.4555	32.5714	33.1243	32.4073
520189	1.1691	1.0354	28.0014	29.0295	29.2229	28.7606
520193	1.7202	0.9460	27.8113	29.2007	29.4737	28.8659
520194	1.5801	1.0161	30.1668	31.4379	31.0015	30.8967
520195	0.6565	1.0161	36.3116	36.2900	41.6120	37.9691
520196	1.7733	0.9597	36.9266	31.1175	33.4890	33.5193
520197	***	*	*	30.1917	*	30.1917
520198	1.3579	0.9401	*	28.5975	29.9803	29.2929
520199	2.0530	1.0161	*	36.5699	37.0128	36.7956
520202	1.6558	0.9791	*	*	*	*
520203	2.9989	1.1208	*	*	*	*
530002	1.1966	0.9189	28.3063	29.2069	29.2418	28.9308
530006	1.2334	0.9189	27.2421	29.2104	30.3724	28.9047
530008[6]	1.1648	0.9271	24.0090	26.5180	30.6010	27.0167
530009	0.9639	0.9189	24.6719	26.0490	27.0555	25.9198
530010[6]	1.2084	0.9271	25.9852	27.4121	28.5534	27.3474

Provider No.	Case-Mix Index[2]	FY 2009 Wage Index	Average Hourly Wage FY 2007	Average Hourly Wage FY 2008	Average Hourly Wage FY 2009[1]	Average Hourly Wage** (3 years)
530011	1.1291	0.9189	27.8772	27.8613	31.1329	28.8660
530012	1.7047	0.9582	26.9582	28.7524	30.6109	28.7896
530014	1.5591	0.9575	26.7156	28.5469	29.6724	28.4448
530015	1.1730	1.0353	29.8310	29.8306	33.4903	31.0908
530017	0.9154	0.9189	29.8503	31.1105	25.8183	28.8540
530025	1.3016	0.9189	24.4392	29.4346	28.8963	27.4715
530032	1.0516	0.9189	23.9004	24.6580	25.4267	24.6848

[1]Based on salaries adjusted for occupational mix, according to the calculation in section III.D.2. of the preamble to the August 19, 2008 IPPS final rule (CMS-1390-F).
[2]The case-mix index is based on the billed DRGs in the FY 2007 MedPAR file. It is not transfer adjusted.
[3]Provider 140010 is part of a multi-campus provider (MCH) that is comprised of campuses that are located in two different CBSAs. The provider number with a "B" in the 4th position, 140B10, indicates the portion of the wage and hours of the MCH that is allocated to CBSA 29404; provider number 140010 indicates the portion of wages and hours of the MCH that is allocated to CBSA 16974.
[4]Provider 220074 is part of a multicampus provider (MCH) that is comprised of campuses that are located in two different CBSAs. The provider number with a "B" in the 4th position, 220B74, indicates the portion of the wage and hours of the MCH that is allocated to CBSA 14484; provider number 220074 indicates the portion of wages and hours of the MCH that is allocated to CBSA 39300.
[5]Provider 230104 is part of a multicampus provider (MCH) that is comprised of campuses that are located in two different CBSAs. The provider number with a "B" in the 4th position, 230B04, indicates the portion of the wage and hours of the MCH that is allocated to CBSA 47644; provider number 230104 indicates the portion of wages and hours of the MCH that is allocated to CBSA 19804.
[6]Special Exception Providers.
*Denotes wage data not available for the provider for that year.
**Based on the sum of the salaries and hours computed for Federal FYs 2007, 2008, and 2009.
***Denotes MedPAR data not available for the provider for FY 2007.

TABLE 4A.--WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS BY CBSA AND BY STATE--FY 2009

[Constituent counties are listed in Table 4E.]

CBSA Code	Urban Area	State	Wage Index	GAF
10180	Abilene, TX	TX	0.8378	0.8859
10380	Aguadilla-Isabela-San Sebastián, PR	PR	0.3298	0.4678
10420	Akron, OH	OH	0.8821	0.9177
10500	Albany, GA	GA	0.8737	0.9117
10580	Albany-Schenectady-Troy, NY	NY	0.8800	0.9162
10740	Albuquerque, NM	NM	0.9395	0.9582
10780	Alexandria, LA	LA	0.8095	0.8653
10900	Allentown-Bethlehem-Easton, PA-NJ	NJ	1.1294	1.0869
10900	Allentown-Bethlehem-Easton, PA-NJ	PA	0.9642	0.9753
11020	Altoona, PA	PA	0.8333	0.8826
11100	Amarillo, TX	TX	0.8965	0.9279
11180	Ames, IA	IA	0.9399	0.9584
11260	Anchorage, AK	AK	1.1852	1.1234
11300	Anderson, IN	IN	0.8894	0.9229
11340	Anderson, SC	SC	0.9697	0.9792
11460	Ann Arbor, MI	MI	1.0406	1.0276
11500	Anniston-Oxford, AL	AL	0.7978	0.8567
11540	Appleton, WI	WI	0.9401	0.9586
11700	Asheville, NC	NC	0.9159	0.9416
12020	Athens-Clarke County, GA	GA	0.9118	0.9387
12060	Atlanta-Sandy Springs-Marietta, GA	GA	0.9739	0.9821
12100	Atlantic City-Hammonton, NJ	NJ	1.1815	1.1210
12220	Auburn-Opelika, AL	AL	0.7618	0.8300
12260	Augusta-Richmond County, GA-SC	GA	0.9571	0.9704
12260	Augusta-Richmond County, GA-SC	SC	0.9567	0.9701
12420	Austin-Round Rock, TX	TX	0.9488	0.9646
12540	Bakersfield, CA	CA	1.1972	1.1312
12580	Baltimore-Towson, MD	MD	0.9982	0.9988
12620	Bangor, ME	ME	1.0078	1.0053
12700	Barnstable Town, MA	MA	1.2652	1.1748
12940	Baton Rouge, LA	LA	0.8131	0.8679
12980	Battle Creek, MI	MI	1.0001	1.0001
13020	Bay City, MI	MI	0.9410	0.9592
13140	Beaumont-Port Arthur, TX	TX	0.8565	0.8994
13380	Bellingham, WA	WA	1.1418	1.0951
13460	Bend, OR	OR	1.0990	1.0668
13644	Bethesda-Frederick-Gaithersburg, MD	MD	1.1009	1.0680
13740	Billings, MT	MT	0.9011	0.9312
13780	Binghamton, NY	NY	0.8688	0.9082
13820	Birmingham-Hoover, AL	AL	0.8754	0.9129
13900	Bismarck, ND	ND	0.7336	0.8088
13980	Blacksburg-Christiansburg-Radford, VA	VA	0.8092	0.8650
14020	Bloomington, IN	IN	0.9390	0.9578
14060	Bloomington-Normal, IL	IL	0.9485	0.9644
14260	Boise City-Nampa, ID	ID	0.9292	0.9510
14484	Boston-Quincy, MA	MA	1.1950	1.1297
14500	Boulder, CO	CO	0.9981	0.9987
14540	Bowling Green, KY	KY	0.8313	0.8812
14600	Bradenton-Sarasota-Venice, FL	FL	0.9737	0.9819

CBSA Code	Urban Area	State	Wage Index	GAF
14740	Bremerton-Silverdale, WA	WA	1.0683	1.0463
14860	Bridgeport-Stamford-Norwalk, CT	CT	1.2824	1.1857
15180	Brownsville-Harlingen, TX	TX	0.9193	0.9440
15260	Brunswick, GA	GA	0.9860	0.9904
15380	Buffalo-Niagara Falls, NY	NY	0.9556	0.9694
15500	Burlington, NC	NC	0.8600	0.9019
15540	Burlington-South Burlington, VT	VT	1.0255	1.0174
15764	Cambridge-Newton-Framingham, MA	MA	1.1088	1.0733
15804	Camden, NJ	NJ	1.1294	1.0869
15940	Canton-Massillon, OH	OH	0.8819	0.9175
15980	Cape Coral-Fort Myers, FL	FL	0.9483	0.9643
16180	Carson City, NV	NV	0.9990	0.9993
16220	Casper, WY	WY	0.9582	0.9712
16300	Cedar Rapids, IA	IA	0.8954	0.9271
16580	Champaign-Urbana, IL	IL	0.9386	0.9575
16620	Charleston, WV	WV	0.8380	0.8860
16700	Charleston-North Charleston-Summerville, SC	SC	0.9184	0.9434
16740	Charlotte-Gastonia-Concord, NC-SC	NC	0.9538	0.9681
16740	Charlotte-Gastonia-Concord, NC-SC	SC	0.9534	0.9678
16820	Charlottesville, VA	VA	0.9693	0.9789
16860	Chattanooga, TN-GA	GA	0.8847	0.9195
16860	Chattanooga, TN-GA	TN	0.8842	0.9192
16940	Cheyenne, WY	WY	0.9189	0.9437
16974	Chicago-Naperville-Joliet, IL	IL	1.0275	1.0188
17020	Chico, CA	CA	1.1972	1.1312
17140	Cincinnati-Middletown, OH-KY-IN	IN	0.9560	0.9697
17140	Cincinnati-Middletown, OH-KY-IN	KY	0.9561	0.9697
17140	Cincinnati-Middletown, OH-KY-IN	OH	0.9560	0.9697
17300	Clarksville, TN-KY	KY	0.8271	0.8781
17300	Clarksville, TN-KY	TN	0.8267	0.8778
17420	Cleveland, TN	TN	0.8124	0.8674
17460	Cleveland-Elyria-Mentor, OH	OH	0.9248	0.9479
17660	Coeur d'Alene, ID	ID	0.9151	0.9411
17780	College Station-Bryan, TX	TX	0.9160	0.9417
17820	Colorado Springs, CO	CO	0.9712	0.9802
17860	Columbia, MO	MO	0.8437	0.8901
17900	Columbia, SC	SC	0.8960	0.9276
17980	Columbus, GA-AL	AL	0.9028	0.9324
17980	Columbus, GA-AL	GA	0.9028	0.9324
18020	Columbus, IN	IN	0.9828	0.9882
18140	Columbus, OH	OH	0.9884	0.9920
18580	Corpus Christi, TX	TX	0.8465	0.8922
18700	Corvallis, OR	OR	1.1024	1.0690
19060	Cumberland, MD-WV	MD	0.8790	0.9155
19060	Cumberland, MD-WV	WV	0.7620	0.8302
19124	Dallas-Plano-Irving, TX	TX	0.9816	0.9874
19140	Dalton, GA	GA	0.8529	0.8968
19180	Danville, IL	IL	0.9675	0.9776
19260	Danville, VA	VA	0.8453	0.8913
19340	Davenport-Moline-Rock Island, IA-IL	IL	0.8570	0.8997
19340	Davenport-Moline-Rock Island, IA-IL	IA	0.8954	0.9271
19380	Dayton, OH	OH	0.9295	0.9512
19460	Decatur, AL	AL	0.7685	0.8350
19500	Decatur, IL	IL	0.8398	0.8873
19660	Deltona-Daytona Beach-Ormond Beach, FL	FL	0.8800	0.9162
19740	Denver-Aurora, CO	CO	1.0549	1.0373
19780	Des Moines-West Des Moines,IA	IA	0.9442	0.9614
19804	Detroit-Livonia-Dearborn, MI	MI	1.0020	1.0014
20020	Dothan, AL	AL	0.7743	0.8393
20100	Dover, DE	DE	1.0630	1.0427
20220	Dubuque, IA	IA	0.8954	0.9271
20260	Duluth, MN-WI	MN	1.0479	1.0326
20260	Duluth, MN-WI	WI	1.0477	1.0324
20500	Durham, NC	NC	0.9659	0.9765
20740	Eau Claire, WI	WI	0.9597	0.9722
20764	Edison-New Brunswick, NJ	NJ	1.1294	1.0869
20940	El Centro, CA	CA	1.1972	1.1312
21060	Elizabethtown, KY	KY	0.8435	0.8900
21140	Elkhart-Goshen, IN	IN	0.9525	0.9672
21300	Elmira, NY	NY	0.8316	0.8814
21340	El Paso, TX	TX	0.8836	0.9187
21500	Erie, PA	PA	0.8725	0.9108
21660	Eugene-Springfield, OR	OR	1.1118	1.0753
21780	Evansville, IN-KY	IN	0.8498	0.8945
21780	Evansville, IN-KY	KY	0.8499	0.8946
21820	Fairbanks, AK	AK	1.1852	1.1234
21940	Fajardo, PR	PR	0.4052	0.5387
22020	Fargo, ND-MN	MN	0.9086	0.9365
22020	Fargo, ND-MN	ND	0.8229	0.8750
22140	Farmington, NM	NM	0.8834	0.9186
22180	Fayetteville, NC	NC	0.9888	0.9923
22220	Fayetteville-Springdale-Rogers, AR-MO	AR	0.9097	0.9372

CBSA Code	Urban Area	State	Wage Index	GAF
22220	Fayetteville-Springdale-Rogers, AR-MO	MO	0.9097	0.9372
22380	Flagstaff, AZ	AZ	1.1609	1.1076
22420	Flint, MI	MI	1.1216	1.0818
22500	Florence, SC	SC	0.8588	0.9010
22520	Florence-Muscle Shoals, AL	AL	0.7878	0.8493
22540	Fond du Lac, WI	WI	0.9503	0.9657
22660	Fort Collins-Loveland, CO	CO	0.9569	0.9703
22744	Ft Lauderdale-Pompano Beach-Deerfield Beach, FL	FL	1.0002	1.0001
22900	Fort Smith, AR-OK	AR	0.7814	0.8446
22900	Fort Smith, AR-OK	OK	0.7940	0.8539
23020	Fort Walton Beach-Crestview-Destin, FL	FL	0.8685	0.9080
23060	Fort Wayne, IN	IN	0.8975	0.9286
23104	Fort Worth-Arlington, TX	TX	0.9650	0.9759
23420	Fresno, CA	CA	1.1972	1.1312
23460	Gadsden, AL	AL	0.7961	0.8554
23540	Gainesville, FL	FL	0.9414	0.9595
23580	Gainesville, GA	GA	0.9309	0.9521
23844	Gary, IN	IN	0.9267	0.9492
24020	Glens Falls, NY	NY	0.8747	0.9124
24140	Goldsboro, NC	NC	0.9126	0.9393
24220	Grand Forks, ND-MN	MN	0.9086	0.9365
24220	Grand Forks, ND-MN	ND	0.7725	0.8380
24300	Grand Junction, CO	CO	0.9646	0.9756
24340	Grand Rapids-Wyoming, MI	MI	0.9245	0.9477
24500	Great Falls, MT	MT	0.8647	0.9052
24540	Greeley, CO	CO	1.0016	1.0011
24580	Green Bay, WI	WI	0.9460	0.9627
24660	Greensboro-High Point, NC	NC	0.9108	0.9380
24780	Greenville, NC	NC	0.9314	0.9525
24860	Greenville-Mauldin-Easley, SC	SC	0.9731	0.9815
25020	Guayama, PR	PR	0.3126	0.4510
25060	Gulfport-Biloxi, MS	MS	0.8865	0.9208
25180	Hagerstown-Martinsburg, MD-WV	MD	0.9268	0.9493
25180	Hagerstown-Martinsburg, MD-WV	WV	0.9234	0.9469
25260	Hanford-Corcoran, CA	CA	1.1972	1.1312
25420	Harrisburg-Carlisle, PA	PA	0.9161	0.9418
25500	Harrisonburg, VA	VA	0.8923	0.9249
25540	Hartford-West Hartford-East Hartford, CT	CT	1.2214	1.1468
25620	Hattiesburg, MS	MS	0.7625	0.8305
25860	Hickory-Lenoir-Morganton, NC	NC	0.8914	0.9243
26100	Holland-Grand Haven, MI	MI	0.9067	0.9351
26180	Honolulu, HI	HI	1.1549	1.1036
26300	Hot Springs, AR	AR	0.9112	0.9383
26380	Houma-Bayou Cane-Thibodaux, LA	LA	0.7844	0.8468
26420	Houston-Sugar Land-Baytown, TX	TX	0.9890	0.9925
26580	Huntington-Ashland, WV-KY-OH	KY	0.9093	0.9370
26580	Huntington-Ashland, WV-KY-OH	OH	0.9091	0.9368
26580	Huntington-Ashland, WV-KY-OH	WV	0.9089	0.9367
26620	Huntsville, AL	AL	0.8953	0.9271
26820	Idaho Falls, ID	ID	0.9069	0.9353
26900	Indianapolis-Carmel, IN	IN	0.9783	0.9851
26980	Iowa City, IA	IA	0.9319	0.9528
27060	Ithaca, NY	NY	0.9525	0.9672
27100	Jackson, MI	MI	0.9442	0.9614
27140	Jackson, MS	MS	0.8064	0.8630
27180	Jackson, TN	TN	0.8437	0.8901
27260	Jacksonville, FL	FL	0.9071	0.9354
27340	Jacksonville, NC	NC	0.8600	0.9019
27500	Janesville, WI	WI	0.9805	0.9866
27620	Jefferson City, MO	MO	0.9012	0.9312
27740	Johnson City, TN	TN	0.7994	0.8579
27780	Johnstown, PA	PA	0.8333	0.8826
27860	Jonesboro, AR	AR	0.8423	0.8891
27900	Joplin, MO	MO	0.9677	0.9778
28020	Kalamazoo-Portage, MI	MI	1.0870	1.0588
28100	Kankakee-Bradley, IL	IL	1.0390	1.0265
28140	Kansas City, MO-KS	KS	0.9423	0.9601
28140	Kansas City, MO-KS	MO	0.9423	0.9601
28420	Kennewick-Pasco-Richland, WA	WA	1.0142	1.0097
28660	Killeen-Temple-Fort Hood, TX	TX	0.8823	0.9178
28700	Kingsport-Bristol-Bristol, TN-VA	TN	0.7943	0.8541
28700	Kingsport-Bristol-Bristol, TN-VA	VA	0.8032	0.8606
28740	Kingston, NY	NY	0.9397	0.9583
28940	Knoxville, TN	TN	0.7943	0.8541
29020	Kokomo, IN	IN	0.9225	0.9463
29100	La Crosse, WI-MN	MN	0.9779	0.9848
29100	La Crosse, WI-MN	WI	0.9776	0.9846
29140	Lafayette, IN	IN	0.9020	0.9318
29180	Lafayette, LA	LA	0.8422	0.8890
29340	Lake Charles, LA	LA	0.7656	0.8328
29404	Lake County-Kenosha County, IL-WI	IL	1.0357	1.0243
29404	Lake County-Kenosha County, IL-WI	WI	1.0354	1.0241

CBSA Code	Urban Area	State	Wage Index	GAF
29420	Lake Havasu City-Kingman, AZ	AZ	0.9801	0.9863
29460	Lakeland-Winter Haven, FL	FL	0.8698	0.9089
29540	Lancaster, PA	PA	0.9797	0.9861
29620	Lansing-East Lansing, MI	MI	0.9862	0.9905
29700	Laredo, TX	TX	0.8785	0.9151
29740	Las Cruces, NM	NM	0.8834	0.9186
29820	Las Vegas-Paradise, NV	NV	1.1618	1.1082
29940	Lawrence, KS	KS	0.8285	0.8791
30020	Lawton, OK	OK	0.8598	0.9017
30140	Lebanon, PA	PA	0.8966	0.9280
30300	Lewiston, ID-WA	ID	0.9236	0.9470
30300	Lewiston, ID-WA	WA	1.0142	1.0097
30340	Lewiston-Auburn, ME	ME	0.9308	0.9521
30460	Lexington-Fayette, KY	KY	0.8917	0.9245
30620	Lima, OH	OH	0.9272	0.9496
30700	Lincoln, NE	NE	0.9584	0.9713
30780	Little Rock-North Little Rock-Conway, AR	AR	0.8766	0.9138
30860	Logan, UT-ID	ID	0.8795	0.9158
30860	Logan, UT-ID	UT	0.8795	0.9158
30980	Longview, TX	TX	0.8667	0.9067
31020	Longview, WA	WA	1.1411	1.0946
31084	Los Angeles-Long Beach-Glendale, CA	CA	1.2032	1.1351
31140	Louisville-Jefferson County, KY-IN	IN	0.9209	0.9451
31140	Louisville-Jefferson County, KY-IN	KY	0.9210	0.9452
31180	Lubbock, TX	TX	0.8681	0.9077
31340	Lynchburg, VA	VA	0.8651	0.9055
31420	Macon, GA	GA	0.9779	0.9848
31460	Madera, CA	CA	1.1972	1.1312
31540	Madison, WI	WI	1.1208	1.0812
31700	Manchester-Nashua, NH	NH	1.0965	1.0651
31900	Mansfield, OH	OH	0.9267	0.9492
32420	Mayagüez, PR	PR	0.3882	0.5231
32580	McAllen-Edinburg-Mission, TX	TX	0.9053	0.9341
32780	Medford, OR	OR	1.0862	1.0583
32820	Memphis, TN-MS-AR	AR	0.9294	0.9511
32820	Memphis, TN-MS-AR	MS	0.9294	0.9511
32820	Memphis, TN-MS-AR	TN	0.9289	0.9507
32900	Merced, CA	CA	1.2055	1.1365
33124	Miami-Miami Beach-Kendall, FL	FL	0.9845	0.9894
33140	Michigan City-La Porte, IN	IN	0.9027	0.9323
33260	Midland, TX	TX	0.9528	0.9674
33340	Milwaukee-Waukesha-West Allis, WI	WI	1.0161	1.0110
33460	Minneapolis-St. Paul-Bloomington, MN-WI	MN	1.0956	1.0645
33460	Minneapolis-St. Paul-Bloomington, MN-WI	WI	1.0953	1.0643
33540	Missoula, MT	MT	0.8876	0.9216
33660	Mobile, AL	AL	0.7828	0.8456
33700	Modesto, CA	CA	1.2114	1.1403
33740	Monroe, LA	LA	0.7935	0.8535
33780	Monroe, MI	MI	0.8995	0.9300
33860	Montgomery, AL	AL	0.8302	0.8804
34060	Morgantown, WV	WV	0.8614	0.9029
34100	Morristown, TN	TN	0.7943	0.8541
34580	Mount Vernon-Anacortes, WA	WA	1.0142	1.0097
34620	Muncie, IN	IN	0.8465	0.8922
34740	Muskegon-Norton Shores, MI	MI	1.0190	1.0130
34820	Myrtle Beach-North Myrtle Beach-Conway, SC	SC	0.8670	0.9069
34900	Napa, CA	CA	1.3945	1.2557
34940	Naples-Marco Island, FL	FL	0.9801	0.9863
34980	Nashville-Davidson-Murfreesboro-Franklin, TN	TN	0.9430	0.9606
35004	Nassau-Suffolk, NY	NY	1.2686	1.1769
35084	Newark-Union, NJ-PA	NJ	1.1518	1.1016
35084	Newark-Union, NJ-PA	PA	1.1544	1.1033
35300	New Haven-Milford, CT	CT	1.2214	1.1468
35380	New Orleans-Metairie-Kenner, LA	LA	0.8953	0.9271
35644	New York-White Plains-Wayne, NY-NJ	NJ	1.2967	1.1947
35644	New York-White Plains-Wayne, NY-NJ	NY	1.2996	1.1966
35660	Niles-Benton Harbor, MI	MI	0.9061	0.9347
35980	Norwich-New London, CT	CT	1.2214	1.1468
36084	Oakland-Fremont-Hayward, CA	CA	1.5630	1.3578
36100	Ocala, FL	FL	0.8616	0.9030
36140	Ocean City, NJ	NJ	1.1562	1.1045
36220	Odessa, TX	TX	0.9392	0.9580
36260	Ogden-Clearfield, UT	UT	0.9208	0.9451
36420	Oklahoma City, OK	OK	0.8654	0.9057
36500	Olympia, WA	WA	1.1439	1.0964
36540	Omaha-Council Bluffs, NE-IA	IA	0.9329	0.9535
36540	Omaha-Council Bluffs, NE-IA	NE	0.9352	0.9552
36740	Orlando-Kissimmee, FL	FL	0.9166	0.9421
36780	Oshkosh-Neenah, WI	WI	0.9401	0.9586
36980	Owensboro, KY	KY	0.8731	0.9113
37100	Oxnard-Thousand Oaks-Ventura, CA	CA	1.1972	1.1312
37340	Palm Bay-Melbourne-Titusville, FL	FL	0.9383	0.9573

CBSA Code	Urban Area	State	Wage Index	GAF
37380	Palm Coast, FL	FL	0.8751	0.9127
37460	Panama City-Lynn Haven, FL	FL	0.8616	0.9030
37620	Parkersburg-Marietta-Vienna, WV-OH	OH	0.8570	0.8997
37620	Parkersburg-Marietta-Vienna, WV-OH	WV	0.8013	0.8592
37700	Pascagoula, MS	MS	0.8000	0.8583
37764	Peabody, MA	MA	1.0704	1.0477
37860	Pensacola-Ferry Pass-Brent, FL	FL	0.8616	0.9030
37900	Peoria, IL	IL	0.9121	0.9389
37964	Philadelphia, PA	PA	1.0949	1.0641
38060	Phoenix-Mesa-Scottsdale, AZ	AZ	1.0224	1.0153
38220	Pine Bluff, AR	AR	0.8243	0.8761
38300	Pittsburgh, PA	PA	0.8613	0.9028
38340	Pittsfield, MA	MA	1.0406	1.0276
38540	Pocatello, ID	ID	0.9069	0.9353
38660	Ponce, PR	PR	0.4107	0.5437
38860	Portland-South Portland-Biddeford, ME	ME	0.9889	0.9924
38900	Portland-Vancouver-Beaverton, OR-WA	OR	1.1170	1.0787
38900	Portland-Vancouver-Beaverton, OR-WA	WA	1.1181	1.0794
38940	Port St. Lucie, FL	FL	0.9887	0.9922
39100	Poughkeepsie-Newburgh-Middletown, NY	NY	1.0922	1.0623
39140	Prescott, AZ	AZ	1.0160	1.0109
39300	Providence-New Bedford-Fall River, RI-MA	MA	1.0667	1.0452
39300	Providence-New Bedford-Fall River, RI-MA	RI	1.0667	1.0452
39340	Provo-Orem, UT	UT	0.9306	0.9519
39380	Pueblo, CO	CO	0.9311	0.9523
39460	Punta Gorda, FL	FL	0.9267	0.9492
39540	Racine, WI	WI	0.9401	0.9586
39580	Raleigh-Cary, NC	NC	0.9645	0.9756
39660	Rapid City, SD	SD	0.9467	0.9632
39740	Reading, PA	PA	0.9301	0.9516
39820	Redding, CA	CA	1.2935	1.1927
39900	Reno-Sparks, NV	NV	1.0447	1.0304
40060	Richmond, VA	VA	0.9169	0.9423
40140	Riverside-San Bernardino-Ontario, CA	CA	1.1972	1.1312
40220	Roanoke, VA	VA	0.8856	0.9202
40340	Rochester, MN	MN	1.0941	1.0635
40380	Rochester, NY	NY	0.8874	0.9215
40420	Rockford, IL	IL	0.9825	0.9880
40484	Rockingham County-Strafford County, NH	NH	1.0965	1.0651
40580	Rocky Mount, NC	NC	0.9036	0.9329
40660	Rome, GA	GA	0.9663	0.9768
40900	Sacramento--Arden-Arcade--Roseville, CA	CA	1.3088	1.2024
40980	Saginaw-Saginaw Township North, MI	MI	0.9000	0.9304
41060	St. Cloud, MN	MN	1.1506	1.1008
41100	St. George, UT	UT	0.9193	0.9440
41140	St. Joseph, MO-KS	KS	1.0456	1.0310
41140	St. Joseph, MO-KS	MO	1.0456	1.0310
41180	St. Louis, MO-IL	IL	0.8963	0.9278
41180	St. Louis, MO-IL	MO	0.8963	0.9278
41420	Salem, OR	OR	1.0862	1.0583
41500	Salinas, CA	CA	1.4797	1.3078
41540	Salisbury, MD	MD	0.9189	0.9437
41620	Salt Lake City, UT	UT	0.9245	0.9477
41660	San Angelo, TX	TX	0.8500	0.8947
41700	San Antonio, TX	TX	0.8917	0.9245
41740	San Diego-Carlsbad-San Marcos, CA	CA	1.1972	1.1312
41780	Sandusky, OH	OH	0.8801	0.9163
41884	San Francisco-San Mateo-Redwood City, CA	CA	1.5065	1.3240
41900	San Germán-Cabo Rojo, PR	PR	0.4630	0.5902
41940	San Jose-Sunnyvale-Santa Clara, CA	CA	1.5830	1.3696
41980	San Juan-Caguas-Guaynabo, PR	PR	0.4388	0.5689
42020	San Luis Obispo-Paso Robles, CA	CA	1.1972	1.1312
42044	Santa Ana-Anaheim-Irvine, CA	CA	1.1972	1.1312
42060	Santa Barbara-Santa Maria-Goleta, CA	CA	1.1972	1.1312
42100	Santa Cruz-Watsonville, CA	CA	1.5902	1.3739
42140	Santa Fe, NM	NM	1.0558	1.0379
42220	Santa Rosa-Petaluma, CA	CA	1.5224	1.3335
42340	Savannah, GA	GA	0.8909	0.9239
42540	Scranton--Wilkes-Barre, PA	PA	0.8333	0.8826
42644	Seattle-Bellevue-Everett, WA	WA	1.1537	1.1029
42680	Sebastian-Vero Beach, FL	FL	0.9500	0.9655
43100	Sheboygan, WI	WI	0.9401	0.9586
43300	Sherman-Denison, TX	TX	0.9258	0.9486
43340	Shreveport-Bossier City, LA	LA	0.8519	0.8960
43580	Sioux City, IA-NE-SD	IA	0.8954	0.9271
43580	Sioux City, IA-NE-SD	NE	0.8750	0.9126
43580	Sioux City, IA-NE-SD	SD	0.8750	0.9126
43620	Sioux Falls, SD	SD	0.9344	0.9546
43780	South Bend-Mishawaka, IN-MI	IN	0.9783	0.9851
43780	South Bend-Mishawaka, IN-MI	MI	0.9785	0.9852
43900	Spartanburg, SC	SC	0.8993	0.9299
44060	Spokane, WA	WA	1.0492	1.0334

CBSA Code	Urban Area	State	Wage Index	GAF
44100	Springfield, IL	IL	0.9099	0.9374
44140	Springfield, MA	MA	1.0492	1.0334
44180	Springfield, MO	MO	0.8523	0.8963
44220	Springfield, OH	OH	0.8717	0.9103
44300	State College, PA	PA	0.8786	0.9152
44700	Stockton, CA	CA	1.1972	1.1312
44940	Sumter, SC	SC	0.8588	0.9010
45060	Syracuse, NY	NY	0.9829	0.9883
45104	Tacoma, WA	WA	1.1114	1.0750
45220	Tallahassee, FL	FL	0.8963	0.9278
45300	Tampa-St. Petersburg-Clearwater, FL	FL	0.8984	0.9293
45460	Terre Haute, IN	IN	0.9103	0.9377
45500	Texarkana, TX-Texarkana, AR	AR	0.8167	0.8705
45500	Texarkana, TX-Texarkana, AR	TX	0.8167	0.8705
45780	Toledo, OH	OH	0.9243	0.9475
45820	Topeka, KS	KS	0.8840	0.9190
45940	Trenton-Ewing, NJ	NJ	1.1294	1.0869
46060	Tucson, AZ	AZ	0.9407	0.9590
46140	Tulsa, OK	OK	0.8607	0.9024
46220	Tuscaloosa, AL	AL	0.8731	0.9113
46340	Tyler, TX	TX	0.8870	0.9212
46540	Utica-Rome, NY	NY	0.8688	0.9082
46660	Valdosta, GA	GA	0.8133	0.8680
46700	Vallejo-Fairfield, CA	CA	1.4074	1.2637
47020	Victoria, TX	TX	0.8124	0.8674
47220	Vineland-Millville-Bridgeton, NJ	NJ	1.1294	1.0869
47260	Virginia Beach-Norfolk-Newport News, VA	NC	0.8844	0.9193
47260	Virginia Beach-Norfolk-Newport News, VA	VA	0.8845	0.9194
47300	Visalia-Porterville, CA	CA	1.1972	1.1312
47380	Waco, TX	TX	0.8672	0.9070
47580	Warner Robins, GA	GA	0.9468	0.9633
47644	Warren-Troy-Farmington-Hills, MI	MI	0.9939	0.9958
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	DC	1.0651	1.0441
47894	Washington-Arlington-Alexandria DC-VA-MD-WV	MD	1.0685	1.0464
47894	Washington-Arlington-Alexandria DC-VA-MD-WV	VA	1.0651	1.0441
47894	Washington-Arlington-Alexandria DC-VA-MD-WV	WV	1.0646	1.0438
47940	Waterloo-Cedar Falls, IA	IA	0.8954	0.9271
48140	Wausau, WI	WI	0.9791	0.9856
48260	Weirton-Steubenville, WV-OH	OH	0.8570	0.8997
48260	Weirton-Steubenville, WV-OH	WV	0.8040	0.8612
48300	Wenatchee, WA	WA	1.0142	1.0097
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	FL	0.9604	0.9727
48540	Wheeling, WV-OH	OH	0.8570	0.8997
48540	Wheeling, WV-OH	WV	0.7620	0.8302
48620	Wichita, KS	KS	0.8947	0.9266
48660	Wichita Falls, TX	TX	0.9142	0.9404
48700	Williamsport, PA	PA	0.8333	0.8826
48864	Wilmington, DE-MD-NJ	DE	1.0605	1.0410
48864	Wilmington, DE-MD-NJ	MD	1.0639	1.0433
48864	Wilmington, DE-MD-NJ	NJ	1.1294	1.0869
48900	Wilmington, NC	NC	0.9055	0.9343
49020	Winchester, VA-WV	VA	0.9735	0.9818
49020	Winchester, VA-WV	WV	0.9731	0.9815
49180	Winston-Salem, NC	NC	0.8981	0.9290
49340	Worcester, MA	MA	1.0905	1.0611
49420	Yakima, WA	WA	1.0142	1.0097
49500	Yauco, PR	PR	0.3345	0.4724
49620	York-Hanover, PA	PA	0.9586	0.9715
49660	Youngstown-Warren-Boardman, OH-PA	OH	0.8904	0.9236
49660	Youngstown-Warren-Boardman, OH-PA	PA	0.8905	0.9237
49700	Yuba City, CA	CA	1.1972	1.1312
49740	Yuma, AZ	AZ	0.9866	0.9908

TABLE 4B.--WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS BY CBSA AND BY STATE--FY 2009

CBSA Code	Rural Area	State	Wage Index	GAF
01	Alabama	AL	0.7618	0.8300
02	Alaska	AK	1.1852	1.1234
03	Arizona	AZ	0.8824	0.9179
04	Arkansas	AR	0.7645	0.8320
05	California	CA	1.1972	1.1312
06	Colorado	CO	0.9311	0.9523
07	Connecticut	CT	1.2214	1.1468
08	Delaware	DE	1.0214	1.0146
10	Florida	FL	0.8616	0.9030
11	Georgia	GA	0.7814	0.8446
12	Hawaii	HI	1.1180	1.0794
13	Idaho	ID	0.7568	0.8263

CBSA Code	Rural Area	State	Wage Index	GAF
14	Illinois	IL	0.8398	0.8873
15	Indiana	IN	0.8465	0.8922
16	Iowa	IA	0.8954	0.9271
17	Kansas	KS	0.8055	0.8623
18	Kentucky	KY	0.7899	0.8509
19	Louisiana	LA	0.7656	0.8328
20	Maine	ME	0.8576	0.9001
21	Maryland	MD	0.8790	0.9155
22	Massachusetts	MA	1.0161	1.0110
23	Michigan	MI	0.8863	0.9207
24	Minnesota	MN	0.9086	0.9365
25	Mississippi	MS	0.7625	0.8305
26	Missouri	MO	0.8415	0.8885
27	Montana	MT	0.8607	0.9024
28	Nebraska	NE	0.8728	0.9110
29	Nevada	NV	0.9810	0.9869
30	New Hampshire	NH	1.0965	1.0651
31	New Jersey[1]	NJ	1.1294	1.0869
32	New Mexico	NM	0.8834	0.9186
33	New York	NY	0.8263	0.8775
34	North Carolina	NC	0.8600	0.9019
35	North Dakota	ND	0.7336	0.8088
36	Ohio	OH	0.8570	0.8997
37	Oklahoma	OK	0.7940	0.8539
38	Oregon	OR	1.0862	1.0583
39	Pennsylvania	PA	0.8333	0.8826
40	Puerto Rico[1]	PR	------	------
41	Rhode Island[1]	RI	------	------
42	South Carolina	SC	0.8588	0.9010
43	South Dakota	SD	0.8396	0.8872
44	Tennessee	TN	0.7943	0.8541
45	Texas	TX	0.8124	0.8674
46	Utah	UT	0.8363	0.8848
47	Vermont	VT	1.0255	1.0174
49	Virginia	VA	0.8032	0.8606
50	Washington	WA	1.0142	1.0097
51	West Virginia	WV	0.7620	0.8302
52	Wisconsin	WI	0.9401	0.9586
53	Wyoming	WY	0.9189	0.9437

[1] All counties in the State or Territory are classified as urban. The New Jersey floor is imputed as specified in §412.64 (h)(4) and discussed in the FY 2005 IPPS final rule (69 FR 49109) and in section III.B.2 of the preamble of FY 2009 IPPS final rule (73 FR 48567).

TABLE 4C.--WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED BY CBSA AND BY STATE--FY 2009

CBSA Code	Area	State	Wage Index	GAF
10420	Akron, OH	OH	0.8821	0.9177
10500	Albany, GA	AL	0.8401	0.8875
10500	Albany, GA	GA	0.8401	0.8875
10580	Albany-Schenectady-Troy, NY	NY	0.8800	0.9162
10740	Albuquerque, NM	NM	0.9205	0.9449
10780	Alexandria, LA	LA	0.8095	0.8653
11100	Amarillo, TX	KS	0.8852	0.9199
11100	Amarillo, TX	TX	0.8851	0.9198
11180	Ames, IA	IA	0.8954	0.9271
11460	Ann Arbor, MI	MI	1.0163	1.0111
12060	Atlanta-Sandy Springs-Marietta, GA	AL	0.9739	0.9821
12060	Atlanta-Sandy Springs-Marietta, GA	GA	0.9739	0.9821
12260	Augusta-Richmond County, GA-SC	SC	0.9567	0.9701
12420	Austin-Round Rock, TX	TX	0.9488	0.9646
12620	Bangor, ME	ME	0.9977	0.9984
12940	Baton Rouge, LA	MS	0.8132	0.8680
13020	Bay City, MI	MI	0.9410	0.9592
13644	Bethesda-Frederick-Gaithersburg, MD	DC	1.0974	1.0657
13644	Bethesda-Frederick-Gaithersburg, MD	PA	1.0974	1.0657
13644	Bethesda-Frederick-Gaithersburg, MD	VA	1.0974	1.0657
13780	Binghamton, NY	PA	0.8537	0.8973
13820	Birmingham-Hoover, AL	AL	0.8632	0.9042
13980	Blacksburg-Christiansburg-Radford, VA	WV	0.7779	0.8420
14020	Bloomington, IN	IN	0.8763	0.9135
14260	Boise City-Nampa, ID	ID	0.9061	0.9347
14484	Boston-Quincy, MA	MA	1.1366	1.0916
14484	Boston-Quincy, MA	RI	1.1366	1.0916
14600	Bradenton-Sarasota-Venice, FL	FL	0.9629	0.9744
14740	Bremerton-Silverdale, WA	WA	1.0555	1.0377
15380	Buffalo-Niagara Falls, NY	NY	0.9556	0.9694
15540	Burlington-South Burlington, VT	NY	0.9182	0.9432
15764	Cambridge-Newton-Framingham, MA	NH	1.0965	1.0651
16180	Carson City, NV	NV	0.9810	0.9869

CBSA Code	Area	State	Wage Index	GAF
16220	Casper, WY	SD	0.9582	0.9712
16580	Champaign-Urbana, IL	IL	0.8850	0.9197
16620	Charleston, WV	WV	0.8380	0.8860
16700	Charleston-North Charleston-Summerville, SC	SC	0.9184	0.9434
16740	Charlotte-Gastonia-Concord, NC-SC	NC	0.9431	0.9607
16740	Charlotte-Gastonia-Concord, NC-SC	SC	0.9428	0.9605
16820	Charlottesville, VA	VA	0.9415	0.9596
16860	Chattanooga, TN-GA	AL	0.8716	0.9102
16860	Chattanooga, TN-GA	GA	0.8716	0.9102
16860	Chattanooga, TN-GA	TN	0.8711	0.9098
16974	Chicago-Naperville-Joliet, IL	IL	1.0275	1.0188
16974	Chicago-Naperville-Joliet, IL	IN	1.0274	1.0187
17140	Cincinnati-Middletown, OH-KY-IN	IN	0.9560	0.9697
17140	Cincinnati-Middletown, OH-KY-IN	OH	0.9560	0.9697
17300	Clarksville, TN-KY	KY	0.8271	0.8781
17460	Cleveland-Elyria-Mentor, OH	OH	0.9248	0.9479
17660	Coeur d'Alene, ID	MT	0.8958	0.9274
17820	Colorado Springs, CO	CO	0.9712	0.9802
17860	Columbia, MO	MO	0.8437	0.8901
17900	Columbia, SC	SC	0.8960	0.9276
17980	Columbus, GA-AL	AL	0.8464	0.8921
17980	Columbus, GA-AL	GA	0.8464	0.8921
18140	Columbus, OH	OH	0.9663	0.9768
18700	Corvallis, OR	OR	1.0862	1.0583
19124	Dallas-Plano-Irving, TX	TX	0.9816	0.9874
19340	Davenport-Moline-Rock Island, IA-IL	IL	0.8570	0.8997
19380	Dayton, OH	OH	0.9295	0.9512
19740	Denver-Aurora, CO	CO	1.0374	1.0255
19804	Detroit-Livonia-Dearborn, MI	MI	1.0020	1.0014
20100	Dover, DE	DE	1.0265	1.0181
20260	Duluth, MN-WI	MN	1.0362	1.0247
20500	Durham, NC	NC	0.9659	0.9765
20500	Durham, NC	VA	0.9659	0.9765
20764	Edison-New Brunswick, NJ	NJ	1.1294	1.0869
21060	Elizabethtown, KY	KY	0.8200	0.8729
21140	Elkhart-Goshen, IN	IN	0.9525	0.9672
21500	Erie, PA	NY	0.8418	0.8888
21660	Eugene-Springfield, OR	OR	1.0862	1.0583
21780	Evansville, IN-KY	IN	0.8465	0.8922
21780	Evansville, IN-KY	KY	0.8100	0.8656
22020	Fargo, ND-MN	ND	0.8229	0.8750
22020	Fargo, ND-MN	SD	0.8396	0.8872
22180	Fayetteville, NC	NC	0.9533	0.9678
22220	Fayetteville-Springdale-Rogers, AR-MO	AR	0.8918	0.9246
22220	Fayetteville-Springdale-Rogers, AR-MO	OK	0.8918	0.9246
22380	Flagstaff, AZ	AZ	1.1263	1.0849
22420	Flint, MI	MI	1.0769	1.0520
22520	Florence-Muscle Shoals, AL	AL	0.7878	0.8493
22520	Florence-Muscle Shoals, AL	MS	0.7878	0.8493
22540	Fond du Lac, WI	WI	0.9503	0.9657
22660	Fort Collins-Loveland, CO	CO	0.9569	0.9703
22744	Ft Lauderdale-Pompano Beach-Deerfield Beach, FL	FL	1.0002	1.0001
23020	Fort Walton Beach-Crestview-Destin, FL	FL	0.8616	0.9030
23060	Fort Wayne, IN	IN	0.8975	0.9286
23104	Fort Worth-Arlington, TX	TX	0.9650	0.9759
23540	Gainesville, FL	FL	0.9414	0.9595
23844	Gary, IN	IN	0.9267	0.9492
24340	Grand Rapids-Wyoming, MI	MI	0.9245	0.9477
24500	Great Falls, MT	MT	0.8647	0.9052
24540	Greeley, CO	NE	0.9575	0.9707
24540	Greeley, CO	WY	0.9575	0.9707
24580	Green Bay, WI	MI	0.9361	0.9558
24580	Green Bay, WI	WI	0.9401	0.9586
24660	Greensboro-High Point, NC	NC	0.8934	0.9257
24660	Greensboro-High Point, NC	VA	0.8934	0.9257
24780	Greenville, NC	NC	0.9141	0.9403
24860	Greenville-Mauldin-Easley, SC	NC	0.9319	0.9528
24860	Greenville-Mauldin-Easley, SC	SC	0.9315	0.9526
25060	Gulfport-Biloxi, MS	MS	0.8418	0.8888
25420	Harrisburg-Carlisle, PA	PA	0.9161	0.9418
25540	Hartford-West Hartford-East Hartford, CT	CT	1.2214	1.1468
25540	Hartford-West Hartford-East Hartford, CT	MA	1.1007	1.0679
25860	Hickory-Lenoir-Morganton, NC	NC	0.8762	0.9135
26180	Honolulu, HI	HI	1.1549	1.1036
26420	Houston-Sugar Land-Baytown, TX	TX	0.9890	0.9925
26580	Huntington-Ashland, WV-KY-OH	KY	0.8734	0.9115
26580	Huntington-Ashland, WV-KY-OH	OH	0.8732	0.9113
26580	Huntington-Ashland, WV-KY-OH	WV	0.8730	0.9112
26620	Huntsville, AL	AL	0.8679	0.9075
26620	Huntsville, AL	TN	0.8675	0.9072
26820	Idaho Falls, ID	ID	0.9069	0.9353
26900	Indianapolis-Carmel, IN	IN	0.9661	0.9767

CBSA Code	Area	State	Wage Index	GAF
26980	Iowa City, IA	IA	0.9089	0.9367
27060	Ithaca, NY	NY	0.9067	0.9351
27140	Jackson, MS	MS	0.8064	0.8630
27180	Jackson, TN	MS	0.8330	0.8824
27180	Jackson, TN	TN	0.8326	0.8821
27260	Jacksonville, FL	GA	0.9075	0.9357
27620	Jefferson City, MO	MO	0.8788	0.9153
27780	Johnstown, PA	PA	0.8333	0.8826
27860	Jonesboro, AR	AR	0.8423	0.8891
27860	Jonesboro, AR	MO	0.8423	0.8891
27900	Joplin, MO	KS	0.9316	0.9526
27900	Joplin, MO	OK	0.9316	0.9526
28020	Kalamazoo-Portage, MI	MI	1.0355	1.0242
28140	Kansas City, MO-KS	MO	0.9423	0.9601
28420	Kennewick-Pasco-Richland, WA	ID	0.9524	0.9672
28420	Kennewick-Pasco-Richland, WA	WA	1.0142	1.0097
28700	Kingsport-Bristol-Bristol, TN-VA	KY	0.7899	0.8509
28700	Kingsport-Bristol-Bristol, TN-VA	TN	0.7943	0.8541
28940	Knoxville, TN	KY	0.7899	0.8509
28940	Knoxville, TN	TN	0.7943	0.8541
29180	Lafayette, LA	LA	0.8422	0.8890
29460	Lakeland-Winter Haven, FL	FL	0.8698	0.9089
29540	Lancaster, PA	PA	0.9797	0.9861
29620	Lansing-East Lansing, MI	MI	0.9616	0.9735
29820	Las Vegas-Paradise, NV	AZ	1.1342	1.0901
29820	Las Vegas-Paradise, NV	UT	1.1342	1.0901
30460	Lexington-Fayette, KY	KY	0.8723	0.9107
30620	Lima, OH	OH	0.9272	0.9496
30700	Lincoln, NE	NE	0.9301	0.9516
30780	Little Rock-North Little Rock-Conway, AR	AR	0.8766	0.9138
30860	Logan, UT-ID	UT	0.8795	0.9158
30980	Longview, TX	TX	0.8667	0.9067
31084	Los Angeles-Long Beach-Glendale, CA	CA	1.2032	1.1351
31140	Louisville-Jefferson County, KY-IN	KY	0.9089	0.9367
31420	Macon, GA	GA	0.9584	0.9713
31540	Madison, WI	WI	1.0991	1.0668
31700	Manchester-Nashua, NH	NH	1.0965	1.0651
32780	Medford, OR	OR	1.0862	1.0583
32820	Memphis, TN-MS-AR	AR	0.8876	0.9216
32820	Memphis, TN-MS-AR	MS	0.8876	0.9216
32820	Memphis, TN-MS-AR	TN	0.8871	0.9212
33124	Miami-Miami Beach-Kendall, FL	FL	0.9845	0.9894
33340	Milwaukee-Waukesha-West Allis, WI	WI	1.0027	1.0018
33460	Minneapolis-St. Paul-Bloomington, MN-WI	MN	1.0956	1.0645
33460	Minneapolis-St. Paul-Bloomington, MN-WI	WI	1.0953	1.0643
33540	Missoula, MT	MT	0.8876	0.9216
33700	Modesto, CA	CA	1.2114	1.1403
33740	Monroe, LA	AR	0.7759	0.8405
33740	Monroe, LA	LA	0.7758	0.8404
33860	Montgomery, AL	AL	0.8302	0.8804
34060	Morgantown, WV	WV	0.8614	0.9029
34820	Myrtle Beach-North Myrtle Beach-Conway, SC	NC	0.8600	0.9019
34820	Myrtle Beach-North Myrtle Beach-Conway, SC	SC	0.8588	0.9010
34980	Nashville-Davidson-Murfreesboro-Franklin, TN	KY	0.9241	0.9474
34980	Nashville-Davidson-Murfreesboro-Franklin, TN	TN	0.9236	0.9470
35004	Nassau-Suffolk, NY	CT	1.2600	1.1715
35084	Newark-Union, NJ-PA	NJ	1.1518	1.1016
35084	Newark-Union, NJ-PA	NY	1.1544	1.1033
35084	Newark-Union, NJ-PA	PA	1.1544	1.1033
35380	New Orleans-Metairie-Kenner, LA	LA	0.8953	0.9271
35644	New York-White Plains-Wayne, NY-NJ	CT	1.2704	1.1781
35644	New York-White Plains-Wayne, NY-NJ	NJ	1.2762	1.1818
35980	Norwich-New London, CT	RI	1.1571	1.1051
36084	Oakland-Fremont-Hayward, CA	CA	1.5518	1.3511
36140	Ocean City, NJ	DE	1.0868	1.0587
36220	Odessa, TX	NM	0.9119	0.9388
36220	Odessa, TX	TX	0.9120	0.9389
36420	Oklahoma City, OK	OK	0.8654	0.9057
36500	Olympia, WA	WA	1.1274	1.0856
36740	Orlando-Kissimmee, FL	FL	0.9052	0.9341
37460	Panama City-Lynn Haven, FL	AL	0.8290	0.8795
37700	Pascagoula, MS	AL	0.8000	0.8583
37764	Peabody, MA	NH	1.0965	1.0651
37860	Pensacola-Ferry Pass-Brent, FL	AL	0.8084	0.8645
37900	Peoria, IL	IL	0.9121	0.9389
37964	Philadelphia, PA	DE	1.0734	1.0497
37964	Philadelphia, PA	NJ	1.1294	1.0869
37964	Philadelphia, PA	PA	1.0733	1.0496
38220	Pine Bluff, AR	MS	0.8120	0.8671
38300	Pittsburgh, PA	OH	0.8612	0.9027
38300	Pittsburgh, PA	PA	0.8613	0.9028
38300	Pittsburgh, PA	WV	0.8610	0.9026

CBSA Code	Area	State	Wage Index	GAF
38340	Pittsfield, MA	NY	0.9863	0.9906
38340	Pittsfield, MA	VT	1.0255	1.0174
38860	Portland-South Portland-Biddeford, ME	ME	0.9611	0.9732
38900	Portland-Vancouver-Beaverton, OR-WA	OR	1.1170	1.0787
38940	Port St. Lucie, FL	FL	0.9722	0.9809
39100	Poughkeepsie-Newburgh-Middletown, NY	NY	1.0684	1.0463
39140	Prescott, AZ	AZ	0.9988	0.9992
39340	Provo-Orem, UT	UT	0.9306	0.9519
39580	Raleigh-Cary, NC	NC	0.9519	0.9668
39740	Reading, PA	PA	0.9080	0.9360
39820	Redding, CA	CA	1.2935	1.1927
39900	Reno-Sparks, NV	NV	1.0447	1.0304
40060	Richmond, VA	VA	0.9169	0.9423
40140	Riverside-San Bernardino-Ontario, CA	AZ	1.1275	1.0856
40220	Roanoke, VA	VA	0.8718	0.9103
40220	Roanoke, VA	WV	0.8714	0.9100
40380	Rochester, NY	NY	0.8874	0.9215
40420	Rockford, IL	IL	0.9721	0.9808
40484	Rockingham County-Strafford County, NH	ME	0.9970	0.9979
40660	Rome, GA	AL	0.9489	0.9647
40900	Sacramento--Arden-Arcade--Roseville, CA	CA	1.2973	1.1951
40980	Saginaw-Saginaw Township North, MI	MI	0.8863	0.9207
41060	St. Cloud, MN	MN	1.0598	1.0406
41100	St. George, UT	UT	0.9193	0.9440
41140	St. Joseph, MO-KS	MO	1.0250	1.0171
41180	St. Louis, MO-IL	IL	0.8963	0.9278
41180	St. Louis, MO-IL	MO	0.8963	0.9278
41620	Salt Lake City, UT	NV	0.9810	0.9869
41620	Salt Lake City, UT	UT	0.9245	0.9477
41700	San Antonio, TX	TX	0.8917	0.9245
41940	San Jose-Sunnyvale-Santa Clara, CA	CA	1.5830	1.3696
42044	Santa Ana-Anaheim-Irvine, CA	CA	1.1972	1.1312
42100	Santa Cruz-Watsonville, CA	CA	1.5902	1.3739
42140	Santa Fe, NM	NM	1.0180	1.0123
42220	Santa Rosa-Petaluma, CA	CA	1.4681	1.3008
42340	Savannah, GA	GA	0.8808	0.9168
42340	Savannah, GA	SC	0.8804	0.9165
42644	Seattle-Bellevue-Everett, WA	WA	1.1354	1.0909
43300	Sherman-Denison, TX	OK	0.9258	0.9486
43340	Shreveport-Bossier City, LA	LA	0.8519	0.8960
43580	Sioux City, IA-NE-SD	NE	0.8728	0.9110
43620	Sioux Falls, SD	SD	0.9344	0.9546
43780	South Bend-Mishawaka, IN-MI	IN	0.9396	0.9582
43900	Spartanburg, SC	SC	0.8993	0.9299
44060	Spokane, WA	ID	1.0277	1.0189
44180	Springfield, MO	AR	0.8523	0.8963
44180	Springfield, MO	MO	0.8523	0.8963
44940	Sumter, SC	SC	0.8588	0.9010
45060	Syracuse, NY	NY	0.9433	0.9608
45220	Tallahassee, FL	GA	0.8365	0.8849
45300	Tampa-St. Petersburg-Clearwater, FL	FL	0.8984	0.9293
45500	Texarkana, TX-Texarkana, AR	AR	0.8063	0.8629
45780	Toledo, OH	OH	0.9243	0.9475
45820	Topeka, KS	KS	0.8688	0.9082
46140	Tulsa, OK	OK	0.8607	0.9024
46220	Tuscaloosa, AL	MS	0.8284	0.8790
46340	Tyler, TX	TX	0.8870	0.9212
47260	Virginia Beach-Norfolk-Newport News, VA	NC	0.8844	0.9193
47894	Washington-Arlington-Alexandria, DC-VA	VA	1.0651	1.0441
48140	Wausau, WI	WI	0.9666	0.9770
48620	Wichita, KS	KS	0.8753	0.9128
48620	Wichita, KS	OK	0.8753	0.9128
48700	Williamsport, PA	PA	0.8333	0.8826
48864	Wilmington, DE-MD-NJ	DE	1.0605	1.0410
48864	Wilmington, DE-MD-NJ	NJ	1.1294	1.0869
48900	Wilmington, NC	SC	0.9051	0.9340
49340	Worcester, MA	NH	1.0965	1.0651
49660	Youngstown-Warren-Boardman, OH-PA	OH	0.8574	0.9000
49660	Youngstown-Warren-Boardman, OH-PA	PA	0.8575	0.9001
04	Arkansas	AR	0.7645	0.8320
04	Arkansas	LA	0.7656	0.8328
05	California	CA	1.1972	1.1312
07	Connecticut	CT	1.2214	1.1468
10	Florida	FL	0.8616	0.9030
14	Illinois	IL	0.8398	0.8873
14	Illinois	KY	0.8398	0.8873
14	Illinois	MO	0.8415	0.8885
16	Iowa	MO	0.8713	0.9100
17	Kansas	KS	0.8055	0.8623
18	Kentucky	KY	0.7899	0.8509
22	Massachusetts	MA	1.0161	1.0110
23	Michigan	MI	0.8863	0.9207

CBSA Code	Area	State	Wage Index	GAF
25	Mississippi	MS	0.7625	0.8305
26	Missouri	AR	0.8415	0.8885
26	Missouri	MO	0.8415	0.8885
30	New Hampshire	VT	1.0282	1.0192
33	New York	NY	0.8263	0.8775
34	North Carolina	TN	0.8596	0.9016
36	Ohio	OH	0.8570	0.8997
37	Oklahoma	OK	0.7940	0.8539
38	Oregon	OR	1.0862	1.0583
39	Pennsylvania	NY	0.8333	0.8826
39	Pennsylvania	PA	0.8333	0.8826
44	Tennessee	KY	0.7947	0.8544
44	Tennessee	TN	0.7943	0.8541
45	Texas	LA	0.8123	0.8673
45	Texas	TX	0.8124	0.8674
47	Vermont	NY	0.9685	0.9783
49	Virginia	KY	0.8032	0.8606
49	Virginia	VA	0.8032	0.8606
50	Washington	WA	1.0142	1.0097
53	Wyoming	NE	0.9189	0.9437

TABLE 4D-1.—STATE SPECIFIC RURAL FLOOR BUDGET NEUTRALITY FACTORS —FY 2009

[*For FY 2009, hospitals will receive a rural floor budget neutrality adjustment factor that blends this factor (weighted at 20 percent) and a nationwide factor (80 percent).]

State	Rural Floor Budget Neutrality Adjustment Factor
Alabama	1.0000
Alaska	0.9916
Arizona	1.0000
Arkansas	1.0000
California	0.9815
Colorado	0.9967
Connecticut	0.9660
Delaware	1.0000
Washington, D.C.	1.0000
Florida	0.9978
Georgia	1.0000
Hawaii	1.0000
Idaho	1.0000
Illinois	0.9999
Indiana	0.9993
Iowa	0.9877
Kansas	1.0000
Kentucky	0.9999
Louisiana	0.9995
Maine	1.0000
Maryland	------
Massachusetts	1.0000
Michigan	1.0000
Minnesota	1.0000
Mississippi	1.0000
Missouri	1.0000
Montana	1.0000
Nebraska	1.0000
Nevada	1.0000
New Hampshire	0.9778
New Jersey	0.9887
New Mexico	0.9988
New York	1.0000
North Carolina	0.9998
North Dakota	1.0000
Ohio	0.9991
Oklahoma	0.9999
Oregon	0.9929
Pennsylvania	0.9999
Puerto Rico	1.0000
Rhode Island	1.0000
South Carolina	0.9979
South Dakota	1.0000
Tennessee	0.9974
Texas	0.9998
Utah	1.0000
Vermont	1.0000
Virginia	0.9999
Washington	0.9979
West Virginia	0.9978
Wisconsin	0.9988

State	Rural Floor Budget Neutrality Adjustment Factor
Wyoming	1.0000

* Maryland hospitals, under section 1814(b)(3) of the Act, are waived from the IPPS ratesetting. Therefore, the rural floor budget neutrality adjustment does not apply.

** The rural floor budget neutrality factor for New Jersey is based on an imputed floor (see Table 4B).

TABLE 4D-2.--URBAN AREAS WITH HOSPITALS RECEIVING THE STATEWIDE RURAL FLOOR OR IMPUTED FLOOR WAGE INDEX--FY 2009

[*Only hospitals that are geographically located in the specified State receive the State's rural or imputed floor wage index.]

CBSA Code	Urban Area	State*	Rural or Imputed Floor Wage Index
10900	Allentown-Bethlehem-Easton, PA-NJ	NJ	1.1294
11020	Altoona, PA	PA	0.8333
11260	Anchorage, AK	AK	1.1852
11540	Appleton, WI	WI	0.9401
12220	Auburn-Opelika, AL	AL	0.7618
12540	Bakersfield, CA	CA	1.1972
13900	Bismarck, ND	ND	0.7336
15500	Burlington, NC	NC	0.8600
15540	Burlington-South Burlington, VT	VT	1.0255
15804	Camden, NJ	NJ	1.1294
16300	Cedar Rapids, IA	IA	0.8954
16940	Cheyenne, WY	WY	0.9189
17020	Chico, CA	CA	1.1972
19060	Cumberland, MD-WV	MD	0.8790
19060	Cumberland, MD-WV	WV	0.7620
19340	Davenport-Moline-Rock Island, IA-IL	IA	0.8954
19500	Decatur, IL	IL	0.8398
20220	Dubuque, IA	IA	0.8954
20764	Edison-New Brunswick, NJ	NJ	1.1294
20940	El Centro, CA	CA	1.1972
21820	Fairbanks, AK	AK	1.1852
22020	Fargo, ND-MN	MN	0.9086
22140	Farmington, NM	NM	0.8834
22500	Florence, SC	SC	0.8588
22900	Fort Smith, AR-OK	OK	0.7940
23420	Fresno, CA	CA	1.1972
24220	Grand Forks, ND-MN	MN	0.9086
25260	Hanford-Corcoran, CA	CA	1.1972
25540	Hartford-West Hartford-East Hartford, CT	CT	1.2214
25620	Hattiesburg, MS	MS	0.7625
27340	Jacksonville, NC	NC	0.8600
27780	Johnstown, PA	PA	0.8333
28420	Kennewick-Pasco-Richland, WA	WA	1.0142
28700	Kingsport-Bristol-Bristol, TN-VA	TN	0.7943
28700	Kingsport-Bristol-Bristol, TN-VA	VA	0.8032
28940	Knoxville, TN	TN	0.7943
29340	Lake Charles, LA	LA	0.7656
29740	Las Cruces, NM	NM	0.8834
30300	Lewiston, ID-WA	WA	1.0142
31460	Madera, CA	CA	1.1972
31700	Manchester-Nashua, NH	NH	1.0965
32780	Medford, OR	OR	1.0862
34100	Morristown, TN	TN	0.7943
34580	Mount Vernon-Anacortes, WA	WA	1.0142
34620	Muncie, IN	IN	0.8465
35300	New Haven-Milford, CT	CT	1.2214
35980	Norwich-New London, CT	CT	1.2214
36100	Ocala, FL	FL	0.8616
36780	Oshkosh-Neenah, WI	WI	0.9401
37100	Oxnard-Thousand Oaks-Ventura, CA	CA	1.1972
37460	Panama City-Lynn Haven, FL	FL	0.8616
37620	Parkersburg-Marietta-Vienna, WV-OH	OH	0.8570
37860	Pensacola-Ferry Pass-Brent, FL	FL	0.8616
39380	Pueblo, CO	CO	0.9311
39540	Racine, WI	WI	0.9401
40140	Riverside-San Bernardino-Ontario, CA	CA	1.1972
40484	Rockingham County-Strafford County, NH	NH	1.0965
41420	Salem, OR	OR	1.0862
41740	San Diego-Carlsbad-San Marcos, CA	CA	1.1972
42020	San Luis Obispo-Paso Robles, CA	CA	1.1972
42044	Santa Ana-Anaheim-Irvine, CA	CA	1.1972
42060	Santa Barbara-Santa Maria-Goleta, CA	CA	1.1972
42540	Scranton--Wilkes-Barre, PA	PA	0.8333

CBSA Code	Urban Area	State*	Rural or Imputed Floor Wage Index
43100	Sheboygan, WI	WI	0.9401
43580	Sioux City, IA-NE-SD	IA	0.8954
44700	Stockton, CA	CA	1.1972
44940	Sumter, SC	SC	0.8588
45940	Trenton-Ewing, NJ	NJ	1.1294
47020	Victoria, TX	TX	0.8124
47220	Vineland-Millville-Bridgeton, NJ	NJ	1.1294
47300	Visalia-Porterville, CA	CA	1.1972
47940	Waterloo-Cedar Falls, IA	IA	0.8954
48260	Weirton-Steubenville, WV-OH	OH	0.8570
48300	Wenatchee, WA	WA	1.0142
48540	Wheeling, WV-OH	OH	0.8570
48540	Wheeling, WV-OH	WV	0.7620
48700	Williamsport, PA	PA	0.8333
48864	Wilmington, DE-MD-NJ	NJ	1.1294
49420	Yakima, WA	WA	1.0142
49700	Yuma City, CA	CA	1.1972

TABLE 4E.—URBAN CBSAs AND CONSTITUENT COUNTIES

CBSA Code	Urban Area (Constituent Counties)
10180	Abilene, TX
	Callahan County, TX
	Jones County, TX
	Taylor County, TX
10380	Aguadilla-Isabela-San Sebastián, PR
	Aguada Municipio, PR
	Aguadilla Municipio, PR
	Añasco Municipio, PR
	Isabela Municipio, PR
	Lares Municipio, PR
	Moca Municipio, PR
	Rincón Municipio, PR
	San Sebastián Municipio, PR
10420	Akron, OH
	Portage County, OH
	Summit County, OH
10500	Albany, GA
	Baker County, GA
	Dougherty County, GA
	Lee County, GA
	Terrell County, GA
	Worth County, GA
10580	Albany-Schenectady-Troy, NY
	Albany County, NY
	Rensselaer County, NY
	Saratoga County, NY
	Schenectady County, NY
	Schoharie County, NY
10740	Albuquerque, NM
	Bernalillo County, NM
	Sandoval County, NM
	Torrance County, NM
	Valencia County, NM
10780	Alexandria, LA
	Grant Parish, LA
	Rapides Parish, LA
10900	Allentown-Bethlehem-Easton, PA-NJ
	Warren County, NJ
	Carbon County, PA
	Lehigh County, PA
	Northampton County, PA
11020	Altoona, PA
	Blair County, PA
11100	Amarillo, TX
	Armstrong County, TX
	Carson County, TX
	Potter County, TX
	Randall County, TX
11180	Ames, IA
	Story County, IA
11260	Anchorage, AK
	Anchorage Municipality, AK
	Matanuska-Susitna Borough, AK
11300	Anderson, IN
	Madison County, IN
11340	Anderson, SC
	Anderson County, SC

CBSA Code	Urban Area (Constituent Counties)
12060	[1]Atlanta-Sandy Springs-Marietta, GA
	Barrow County, GA
	Bartow County, GA
	Butts County, GA
	Carroll County, GA
	Cherokee County, GA
	Clayton County, GA
	Cobb County, GA
	Coweta County, GA
	Dawson County, GA
	DeKalb County, GA
	Douglas County, GA
	Fayette County, GA
	Forsyth County, GA
	Fulton County, GA
	Gwinnett County, GA
	Haralson County, GA
	Heard County, GA
	Henry County, GA
	Jasper County, GA
	Lamar County, GA
	Meriwether County, GA
	Newton County, GA
	Paulding County, GA
	Pickens County, GA
	Pike County, GA
	Rockdale County, GA
	Spalding County, GA
	Walton County, GA
12100	Atlantic City-Hammonton, NJ
	Atlantic County, NJ
	Hammonton County, NJ
12220	Auburn-Opelika, AL
	Lee County, AL
12260	Augusta-Richmond County, GA-SC
	Burke County, GA
	Columbia County, GA
	McDuffie County, GA
	Richmond County, GA
	Aiken County, SC
	Edgefield County, SC

CBSA Code	Urban Area (Constituent Counties)
11460	Ann Arbor, MI
	Washtenaw County, MI
11500	Anniston-Oxford, AL
	Calhoun County, AL
11540	Appleton, WI
	Calumet County, WI
	Outagamie County, WI
11700	Asheville, NC
	Buncombe County, NC
	Haywood County, NC
	Henderson County, NC
	Madison County, NC
12020	Athens-Clarke County, GA
	Clarke County, GA
	Madison County, GA
	Oconee County, GA
	Oglethorpe County, GA

CBSA Code	Urban Area (Constituent Counties)
12420	[1]Austin-Round Rock, TX
	Bastrop County, TX
	Caldwell County, TX
	Hays County, TX
	Travis County, TX
	Williamson County, TX
12540	Bakersfield, CA
	Kern County, CA
12580	[1]Baltimore-Towson, MD
	Anne Arundel County, MD
	Baltimore County, MD
	Carroll County, MD
	Harford County, MD
	Howard County, MD
	Queen Anne's County, MD
	Baltimore City, MD
12620	Bangor, ME
	Penobscot County, ME
12700	Barnstable Town, MA
	Barnstable County, MA
12940	Baton Rouge, LA
	Ascension Parish, LA
	East Baton Rouge Parish, LA
	East Feliciana Parish, LA
	Iberville Parish, LA
	Livingston Parish, LA
	Pointe Coupee Parish, LA
	St. Helena Parish, LA
	West Baton Rouge Parish, LA
	West Feliciana Parish, LA
12980	Battle Creek, MI
	Calhoun County, MI
13020	Bay City, MI
	Bay County, MI
13140	Beaumont-Port Arthur, TX
	Hardin County, TX
	Jefferson County, TX
	Orange County, TX
13380	Bellingham, WA
	Whatcom County, WA
13460	Bend, OR
	Deschutes County, OR
13644	[1]Bethesda-Frederick-Gaithersburg, MD
	Frederick County, MD
	Montgomery County, MD
13740	Billings, MT
	Carbon County, MT
	Yellowstone County, MT
13780	Binghamton, NY
	Broome County, NY
	Tioga County, NY
13820	[1]Birmingham-Hoover, AL
	Bibb County, AL
	Blount County, AL
	Chilton County, AL
	Jefferson County, AL
	St. Clair County, AL
	Shelby County, AL
	Walker County, AL
13900	Bismarck, ND
	Burleigh County, ND
	Morton County, ND
13980	Blacksburg-Christiansburg-Radford, VA
	Giles County, VA
	Montgomery County, VA
	Pulaski County, VA
	Radford City, VA
14020	Bloomington, IN
	Greene County, IN
	Monroe County, IN
	Owen County, IN
14060	Bloomington-Normal, IL
	McLean County, IL
14260	Boise City-Nampa, ID
	Ada County, ID
	Boise County, ID
	Canyon County, ID
	Gem County, ID
	Owyhee County, ID
14484	[1]Boston-Quincy, MA
	Norfolk County, MA
	Plymouth County, MA
	Suffolk County, MA

CBSA Code	Urban Area (Constituent Counties)
14500	Boulder, CO
	Boulder County, CO
14540	Bowling Green, KY
	Edmonson County, KY
	Warren County, KY
	Bradenton-Sarasota-Venice, FL
	Bradenton County, FL
	Manatee County, FL
14600	Sarasota County, FL
14740	Bremerton-Silverdale, WA
	Kitsap County, WA
14860	Bridgeport-Stamford-Norwalk, CT
	Fairfield County, CT
15180	Brownsville-Harlingen, TX
	Cameron County, TX
15260	Brunswick, GA
	Brantley County, GA
	Glynn County, GA
	McIntosh County, GA
15380	[1]Buffalo-Niagara Falls, NY
	Erie County, NY
	Niagara County, NY
15500	Burlington, NC
	Alamance County, NC
15540	Burlington-South Burlington, VT
	Chittenden County, VT
	Franklin County, VT
	Grand Isle County, VT
15764	[1]Cambridge-Newton-Framingham, MA
	Middlesex County, MA
15804	[1]Camden, NJ
	Burlington County, NJ
	Camden County, NJ
	Gloucester County, NJ
15940	Canton-Massillon, OH
	Carroll County, OH
	Stark County, OH
15980	Cape Coral-Fort Myers, FL
	Lee County, FL
16180	Carson City, NV
	Carson City, NV
16220	Casper, WY
	Natrona County, WY
16300	Cedar Rapids, IA
	Benton County, IA
	Jones County, IA
	Linn County, IA
16580	Champaign-Urbana, IL
	Champaign County, IL
	Ford County, IL
	Piatt County, IL
16620	Charleston, WV
	Boone County, WV
	Clay County, WV
	Kanawha County, WV
	Lincoln County, WV
	Putnam County, WV
	Charleston-North Charleston-Summerville, SC
16700	Berkeley County, SC
	Charleston County, SC
	Dorchester County, SC
	Summerville County, SC
16740	[1]Charlotte-Gastonia-Concord, NC-SC
	Anson County, NC
	Cabarrus County, NC
	Gaston County, NC
	Mecklenburg County, NC
	Union County, NC
	York County, SC
16820	Charlottesville, VA
	Albemarle County, VA
	Fluvanna County, VA
	Greene County, VA
	Nelson County, VA
	Charlottesville City, VA
16860	Chattanooga, TN-GA
	Catoosa County, GA
	Dade County, GA
	Walker County, GA
	Hamilton County, TN
	Marion County, TN
	Sequatchie County, TN

CBSA Code	Urban Area (Constituent Counties)
16940	Cheyenne, WY
	Laramie County, WY
16974	[1]Chicago-Naperville-Joliet, IL
	Cook County, IL
	DeKalb County, IL
	DuPage County, IL
	Grundy County, IL
	Kane County, IL
	Kendall County, IL
	McHenry County, IL
	Will County, IL
17020	Chico, CA
	Butte County, CA
17140	[1]Cincinnati-Middletown, OH-KY-IN
	Dearborn County, IN
	Franklin County, IN
	Ohio County, IN
	Boone County, KY
	Bracken County, KY
	Campbell County, KY
	Gallatin County, KY
	Grant County, KY
	Kenton County, KY
	Pendleton County, KY
	Brown County, OH
	Butler County, OH
	Clermont County, OH
	Hamilton County, OH
	Warren County, OH
17300	Clarksville, TN-KY
	Christian County, KY
	Trigg County, KY
	Montgomery County, TN
	Stewart County, TN
17420	Cleveland, TN
	Bradley County, TN
	Polk County, TN
17460	[1]Cleveland-Elyria-Mentor, OH
	Cuyahoga County, OH
	Geauga County, OH
	Lake County, OH
	Lorain County, OH
	Medina County, OH
17660	Coeur d'Alene, ID
	Kootenai County, ID
17780	College Station-Bryan, TX
	Brazos County, TX
	Burleson County, TX
	Robertson County, TX
17820	Colorado Springs, CO
	El Paso County, CO
	Teller County, CO
17860	Columbia, MO
	Boone County, MO
	Howard County, MO
17900	Columbia, SC
	Calhoun County, SC
	Fairfield County, SC
	Kershaw County, SC
	Lexington County, SC
	Richland County, SC
	Saluda County, SC
17980	Columbus, GA-AL
	Russell County, AL
	Chattahoochee County, GA
	Harris County, GA
	Marion County, GA
	Muscogee County, GA
18020	Columbus, IN
	Bartholomew County, IN
18140	[1]Columbus, OH
	Delaware County, OH
	Fairfield County, OH
	Franklin County, OH
	Licking County, OH
	Madison County, OH
	Morrow County, OH
	Pickaway County, OH
	Union County, OH

CBSA Code	Urban Area (Constituent Counties)
18580	Corpus Christi, TX Aransas County, TX Nueces County, TX San Patricio County, TX
18700	Corvallis, OR Benton County, OR
19060	Cumberland, MD-WV Allegany County, MD Mineral County, WV
19124	[1]Dallas-Plano-Irving, TX Collin County, TX Dallas County, TX Delta County, TX Denton County, TX Ellis County, TX Hunt County, TX Kaufman County, TX Rockwall County, TX
19140	Dalton, GA Murray County, GA Whitfield County, GA
19180	Danville, IL Vermilion County, IL
19260	Danville, VA Pittsylvania County, VA Danville City, VA
19340	Davenport-Moline-Rock Island, IA-IL Henry County, IL Mercer County, IL Rock Island County, IL Scott County, IA
19380	Dayton, OH Greene County, OH Miami County, OH Montgomery County, OH Preble County, OH
19460	Decatur, AL Lawrence County, AL Morgan County, AL
19500	Decatur, IL Macon County, IL
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia County, FL
19740	[1]Denver-Aurora, CO Adams County, CO Arapahoe County, CO Broomfield County, CO Clear Creek County, CO Denver County, CO Douglas County, CO Elbert County, CO Gilpin County, CO Jefferson County, CO Park County, CO
19780	Des Moines-West Des Moines, IA Dallas County, IA Guthrie County, IA Madison County, IA Polk County, IA Warren County, IA
19804	[1]Detroit-Livonia-Dearborn, MI Wayne County, MI
20020	Dothan, AL Geneva County, AL Henry County, AL Houston County, AL
20100	Dover, DE Kent County, DE
20220	Dubuque, IA Dubuque County, IA
20260	Duluth, MN-WI Carlton County, MN St. Louis County, MN Douglas County, WI
20500	Durham, NC Chatham County, NC Durham County, NC Orange County, NC Person County, NC
20740	Eau Claire, WI Chippewa County, WI Eau Claire County, WI

CBSA Code	Urban Area (Constituent Counties)
20764	[1]Edison-New Brunswick, NJ Middlesex County, NJ Monmouth County, NJ New Brunswick County, NJ Ocean County, NJ Somerset County, NJ
20940	El Centro, CA Imperial County, CA
21060	Elizabethtown, KY Hardin County, KY Larue County, KY
21140	Elkhart-Goshen, IN Elkhart County, IN
21300	Elmira, NY Chemung County, NY
21340	El Paso, TX El Paso County, TX
21500	Erie, PA Erie County, PA
21660	Eugene-Springfield, OR Lane County, OR
21780	Evansville, IN-KY Gibson County, IN Posey County, IN Vanderburgh County, IN Warrick County, IN Henderson County, KY Webster County, KY
21820	Fairbanks, AK Fairbanks North Star Borough, AK
21940	Fajardo, PR Ceiba Municipio, PR Fajardo Municipio, PR Luquillo Municipio, PR
22020	Fargo, ND-MN Clay County, MN Cass County, ND
22140	Farmington, NM San Juan County, NM
22180	Fayetteville, NC Cumberland County, NC Hoke County, NC
22220	Fayetteville-Springdale-Rogers, AR-MO Benton County, AR Madison County, AR Washington County, AR McDonald County, MO
22380	Flagstaff, AZ Coconino County, AZ
22420	Flint, MI Genesee County, MI
22500	Florence, SC Darlington County, SC Florence County, SC
22520	Florence-Muscle Shoals, AL Colbert County, AL Lauderdale County, AL
22540	Fond du Lac, WI Fond du Lac County, WI
22660	Fort Collins-Loveland, CO Larimer County, CO
22744	[1]Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Broward County, FL
22900	Fort Smith, AR-OK Crawford County, AR Franklin County, AR Sebastian County, AR Le Flore County, OK Sequoyah County, OK
23020	Fort Walton Beach-Crestview-Destin, FL Okaloosa County, FL
23060	Fort Wayne, IN Allen County, IN Wells County, IN Whitley County, IN
23104	[1]Fort Worth-Arlington, TX Johnson County, TX Parker County, TX Tarrant County, TX Wise County, TX
23420	Fresno, CA Fresno County, CA
23460	Gadsden, AL Etowah County, AL

CBSA Code	Urban Area (Constituent Counties)
23540	Gainesville, FL
	Alachua County, FL
	Gilchrist County, FL
23580	Gainesville, GA
	Hall County, GA
23844	Gary, IN
	Jasper County, IN
	Lake County, IN
	Newton County, IN
	Porter County, IN
24020	Glens Falls, NY
	Warren County, NY
	Washington County, NY
24140	Goldsboro, NC
	Wayne County, NC
24220	Grand Forks, ND-MN
	Polk County, MN
	Grand Forks County, ND
24300	Grand Junction, CO
	Mesa County, CO
24340	Grand Rapids-Wyoming, MI
	Barry County, MI
	Ionia County, MI
	Kent County, MI
	Newaygo County, MI
24500	Great Falls, MT
	Cascade County, MT
24540	Greeley, CO
	Weld County, CO
24580	Green Bay, WI
	Brown County, WI
	Kewaunee County, WI
	Oconto County, WI
24660	Greensboro-High Point, NC
	Guilford County, NC
	Randolph County, NC
	Rockingham County, NC
24780	Greenville, NC
	Greene County, NC
	Pitt County, NC
24860	Greenville-Mauldin-Easley, SC
	Greenville County, SC
	Laurens County, SC
	Pickens County, SC
25020	Guayama, PR
	Arroyo Municipio, PR
	Guayama Municipio, PR
	Patillas Municipio, PR
25060	Gulfport-Biloxi, MS
	Hancock County, MS
	Harrison County, MS
	Stone County, MS
25180	Hagerstown-Martinsburg, MD-WV
	Washington County, MD
	Berkeley County, WV
	Morgan County, WV
25260	Hanford-Corcoran, CA
	Kings County, CA
25420	Harrisburg-Carlisle, PA
	Cumberland County, PA
	Dauphin County, PA
	Perry County, PA
25500	Harrisonburg, VA
	Rockingham County, VA
	Harrisonburg City, VA
25540	[1]Hartford-West Hartford-East Hartford, CT
	Hartford County, CT
	Middlesex County, CT
	Tolland County, CT
25620	Hattiesburg, MS
	Forrest County, MS
	Lamar County, MS
	Perry County, MS
25860	Hickory-Lenoir-Morganton, NC
	Alexander County, NC
	Burke County, NC
	Caldwell County, NC
	Catawba County, NC
25980	Hinesville-Fort Stewart, GA
	Liberty County, GA
	Long County, GA

CBSA Code	Urban Area (Constituent Counties)
26100	Holland-Grand Haven, MI
	Ottawa County, MI
26180	Honolulu, HI
	Honolulu County, HI
26300	Hot Springs, AR
	Garland County, AR
26380	Houma-Bayou Cane-Thibodaux, LA
	Lafourche Parish, LA
	Terrebonne Parish, LA
26420	[1]Houston-Sugar Land-Baytown, TX
	Austin County, TX
	Brazoria County, TX
	Chambers County, TX
	Fort Bend County, TX
	Galveston County, TX
	Harris County, TX
	Liberty County, TX
	Montgomery County, TX
	San Jacinto County, TX
	Waller County, TX
26580	Huntington-Ashland, WV-KY-OH
	Boyd County, KY
	Greenup County, KY
	Lawrence County, OH
	Cabell County, WV
	Wayne County, WV
26620	Huntsville, AL
	Limestone County, AL
	Madison County, AL
26820	Idaho Falls, ID
	Bonneville County, ID
	Jefferson County, ID
26900	[1]Indianapolis-Carmel, IN
	Boone County, IN
	Brown County, IN
	Hamilton County, IN
	Hancock County, IN
	Hendricks County, IN
	Johnson County, IN
	Marion County, IN
	Morgan County, IN
	Putnam County, IN
	Shelby County, IN
26980	Iowa City, IA
	Johnson County, IA
	Washington County, IA
27060	Ithaca, NY
	Tompkins County, NY
27100	Jackson, MI
	Jackson County, MI
27140	Jackson, MS
	Copiah County, MS
	Hinds County, MS
	Madison County, MS
	Rankin County, MS
	Simpson County, MS
27180	Jackson, TN
	Chester County, TN
	Madison County, TN
27260	[1]Jacksonville, FL
	Baker County, FL
	Clay County, FL
	Duval County, FL
	Nassau County, FL
	St. Johns County, FL
27340	Jacksonville, NC
	Onslow County, NC
27500	Janesville, WI
	Rock County, WI
27620	Jefferson City, MO
	Callaway County, MO
	Cole County, MO
	Moniteau County, MO
	Osage County, MO

CBSA Code	Urban Area (Constituent Counties)
27740	Johnson City, TN
	Carter County, TN
	Unicoi County, TN
	Washington County, TN
27780	Johnstown, PA
	Cambria County, PA
27860	Jonesboro, AR
	Craighead County, AR
	Poinsett County, AR
27900	Joplin, MO
	Jasper County, MO
	Newton County, MO
28020	Kalamazoo-Portage, MI
	Kalamazoo County, MI
	Van Buren County, MI
28100	Kankakee-Bradley, IL
	Kankakee County, IL
28140	[1]Kansas City, MO-KS
	Franklin County, KS
	Johnson County, KS
	Leavenworth County, KS
	Linn County, KS
	Miami County, KS
	Wyandotte County, KS
	Bates County, MO
	Caldwell County, MO
	Cass County, MO
	Clay County, MO
	Clinton County, MO
	Jackson County, MO
	Lafayette County, MO
	Platte County, MO
	Ray County, MO
28420	Kennewick-Pasco-Richland, WA
	Benton County, WA
	Franklin County, WA
28660	Killeen-Temple-Fort Hood, TX
	Bell County, TX
	Coryell County, TX
	Lampasas County, TX

CBSA Code	Urban Area (Constituent Counties)
28700	Kingsport-Bristol-Bristol, TN-VA
	Hawkins County, TN
	Sullivan County, TN
	Bristol City, VA
	Scott County, VA
	Washington County, VA
28740	Kingston, NY
	Ulster County, NY
28940	Knoxville, TN
	Anderson County, TN
	Blount County, TN
	Knox County, TN
	Loudon County, TN
	Union County, TN
29020	Kokomo, IN
	Howard County, IN
	Tipton County, IN
29100	La Crosse, WI-MN
	Houston County, MN
	La Crosse County, WI
29140	Lafayette, IN
	Benton County, IN
	Carroll County, IN
	Tippecanoe County, IN
29180	Lafayette, LA
	Lafayette Parish, LA
	St. Martin Parish, LA
29340	Lake Charles, LA
	Calcasieu Parish, LA
	Cameron Parish, LA
29404	Lake County-Kenosha County, IL-WI
	Lake County, IL
	Kenosha County, WI
29420	Lake Havasu City-Kingman, AZ
	Mohave County, AZ
29460	Lakeland-Winter Haven, FL
	Polk County, FL
	Winter Haven County, FL
29540	Lancaster, PA
	Lancaster County, PA

CBSA Code	Urban Area (Constituent Counties)
29620	Lansing-East Lansing, MI
	Clinton County, MI
	Eaton County, MI
	Ingham County, MI
29700	Laredo, TX
	Webb County, TX
29740	Las Cruces, NM
	Dona Ana County, NM
29820	[1]Las Vegas-Paradise, NV
	Clark County, NV
29940	Lawrence, KS
	Douglas County, KS
30020	Lawton, OK
	Comanche County, OK
30140	Lebanon, PA
	Lebanon County, PA
30300	Lewiston, ID-WA
	Nez Perce County, ID
	Asotin County, WA
30340	Lewiston-Auburn, ME
	Androscoggin County, ME
30460	Lexington-Fayette, KY
	Bourbon County, KY
	Clark County, KY
	Fayette County, KY
	Jessamine County, KY
	Scott County, KY
	Woodford County, KY
30620	Lima, OH
	Allen County, OH
30700	Lincoln, NE
	Lancaster County, NE
	Seward County, NE
30780	Little Rock-North Little Rock-Conway, AR
	Faulkner County, AR
	Grant County, AR
	Lonoke County, AR
	Perry County, AR
	Pulaski County, AR
	Saline County, AR
30860	Logan, UT-ID
	Franklin County, ID
	Cache County, UT
30980	Longview, TX
	Gregg County, TX
	Rusk County, TX
	Upshur County, TX
31020	Longview, WA
	Cowlitz County, WA
31084	[1]Los Angeles-Long Beach-Glendale, CA
	Los Angeles County, CA
31140	[1]Louisville-Jefferson County, KY-IN
	Clark County, IN
	Floyd County, IN
	Harrison County, IN
	Washington County, IN
	Bullitt County, KY
	Henry County, KY
	Jefferson County, KY
	Meade County, KY
	Nelson County, KY
	Oldham County, KY
	Shelby County, KY
	Spencer County, KY
	Trimble County, KY
31180	Lubbock, TX
	Crosby County, TX
	Lubbock County, TX
31340	Lynchburg, VA
	Amherst County, VA
	Appomattox County, VA
	Bedford County, VA
	Campbell County, VA
	Bedford City, VA
	Lynchburg City, VA
31420	Macon, GA
	Bibb County, GA
	Crawford County, GA
	Jones County, GA
	Monroe County, GA
	Twiggs County, GA

CBSA Code	Urban Area (Constituent Counties)
31460	Madera, CA
	Madera County, CA
31540	Madison, WI
	Columbia County, WI
	Dane County, WI
	Iowa County, WI
31700	Manchester-Nashua, NH
	Hillsborough County, NH
31900	Mansfield, OH
	Richland County, OH
32420	Mayagüez, PR
	Hormigueros Municipio, PR
	Mayagüez Municipio, PR
32580	McAllen-Edinburg-Mission, TX
	Hidalgo County, TX
32780	Medford, OR
	Jackson County, OR
32820	[1]Memphis, TN-MS-AR
	Crittenden County, AR
	DeSoto County, MS
	Marshall County, MS
	Tate County, MS
	Tunica County, MS
	Fayette County, TN
	Shelby County, TN
	Tipton County, TN
32900	Merced, CA
	Merced County, CA
33124	[1]Miami-Miami Beach-Kendall, FL
	Miami-Dade County, FL
33140	Michigan City-La Porte, IN
	LaPorte County, IN
33260	Midland, TX
	Midland County, TX
33340	[1]Milwaukee-Waukesha-West Allis, WI
	Milwaukee County, WI
	Ozaukee County, WI
	Washington County, WI
	Waukesha County, WI

CBSA Code	Urban Area (Constituent Counties)
33460	[1]Minneapolis-St. Paul-Bloomington, MN-WI
	Anoka County, MN
	Carver County, MN
	Chisago County, MN
	Dakota County, MN
	Hennepin County, MN
	Isanti County, MN
	Ramsey County, MN
	Scott County, MN
	Sherburne County, MN
	Washington County, MN
	Wright County, MN
	Pierce County, WI
	St. Croix County, WI
33540	Missoula, MT
	Missoula County, MT
33660	Mobile, AL
	Mobile County, AL
33700	Modesto, CA
	Stanislaus County, CA
33740	Monroe, LA
	Ouachita Parish, LA
	Union Parish, LA
33780	Monroe, MI
	Monroe County, MI
33860	Montgomery, AL
	Autauga County, AL
	Elmore County, AL
	Lowndes County, AL
	Montgomery County, AL
34060	Morgantown, WV
	Monongalia County, WV
	Preston County, WV
34100	Morristown, TN
	Grainger County, TN
	Hamblen County, TN
	Jefferson County, TN
34580	Mount Vernon-Anacortes, WA
	Skagit County, WA
34620	Muncie, IN
	Delaware County, IN

CBSA Code	Urban Area (Constituent Counties)
34740	Muskegon-Norton Shores, MI Muskegon County, MI
34820	Myrtle Beach-North Myrtle Beach-Conway, SC Horry County, SC
34900	Napa, CA Napa County, CA
34940	Naples-Marco Island, FL Collier County, FL
34980	[1]Nashville-Davidson-Murfreesboro-Franklin, TN Cannon County, TN Cheatham County, TN Davidson County, TN Dickson County, TN Hickman County, TN Macon County, TN Robertson County, TN Rutherford County, TN Smith County, TN Sumner County, TN Trousdale County, TN Williamson County, TN Wilson County, TN
35004	[1]Nassau-Suffolk, NY Nassau County, NY Suffolk County, NY
35084	[1]Newark-Union, NJ-PA Essex County, NJ Hunterdon County, NJ Morris County, NJ Sussex County, NJ Union County, NJ Pike County, PA
35300	New Haven-Milford, CT New Haven County, CT
35380	[1]New Orleans-Metairie-Kenner, LA Jefferson Parish, LA Orleans Parish, LA Plaquemines Parish, LA St. Bernard Parish, LA St. Charles Parish, LA St. John the Baptist Parish, LA St. Tammany Parish, LA
35644	[1]New York-White Plains-Wayne, NY-NJ Bergen County, NJ Hudson County, NJ Passaic County, NJ Bronx County, NY Kings County, NY New York County, NY Putnam County, NY Queens County, NY Richmond County, NY Rockland County, NY Westchester County, NY
35660	Niles-Benton Harbor, MI Berrien County, MI
35980	Norwich-New London, CT New London County, CT
36084	[1]Oakland-Fremont-Hayward, CA Alameda County, CA Contra Costa County, CA
36100	Ocala, FL Marion County, FL
36140	Ocean City, NJ Cape May County, NJ
36220	Odessa, TX Ector County, TX
36260	Ogden-Clearfield, UT Davis County, UT Morgan County, UT Weber County, UT
36420	[1]Oklahoma City, OK Canadian County, OK Cleveland County, OK Grady County, OK Lincoln County, OK Logan County, OK McClain County, OK Oklahoma County, OK
36500	Olympia, WA Thurston County, WA

CBSA Code	Urban Area (Constituent Counties)
36540	Omaha-Council Bluffs, NE-IA Harrison County, IA Mills County, IA Pottawattamie County, IA Cass County, NE Douglas County, NE Sarpy County, NE Saunders County, NE Washington County, NE
36740	[1]Orlando-Kissimmee, FL Lake County, FL Orange County, FL Osceola County, FL Seminole County, FL
36780	Oshkosh-Neenah, WI Winnebago County, WI
36980	Owensboro, KY Daviess County, KY Hancock County, KY McLean County, KY
37100	Oxnard-Thousand Oaks-Ventura, CA Ventura County, CA
37340	Palm Bay-Melbourne-Titusville, FL Brevard County, FL
37380	Palm Coast, FL Flager County, FL
37460	Panama City-Lynn Haven, FL Bay County, FL
37620	Parkersburg-Marietta-Vienna, WV-OH Washington County, OH Pleasants County, WV Wirt County, WV Wood County, WV
37700	Pascagoula, MS George County, MS Jackson County, MS
37764	Peabody, MA Essex County, MA
37860	Pensacola-Ferry Pass-Brent, FL Escambia County, FL Santa Rosa County, FL
37900	Peoria, IL Marshall County, IL Peoria County, IL Stark County, IL Tazewell County, IL Woodford County, IL
37964	[1]Philadelphia, PA Bucks County, PA Chester County, PA Delaware County, PA Montgomery County, PA Philadelphia County, PA
38060	[1]Phoenix-Mesa-Scottsdale, AZ Maricopa County, AZ Pinal County, AZ
38220	Pine Bluff, AR Cleveland County, AR Jefferson County, AR Lincoln County, AR
38300	[1]Pittsburgh, PA Allegheny County, PA Armstrong County, PA Beaver County, PA Butler County, PA Fayette County, PA Washington County, PA Westmoreland County, PA
38340	Pittsfield, MA Berkshire County, MA
38540	Pocatello, ID Bannock County, ID Power County, ID
38660	Ponce, PR Juana Díaz Municipio, PR Ponce Municipio, PR Villalba Municipio, PR
38860	Portland-South Portland-Biddeford, ME Cumberland County, ME Sagadahoc County, ME York County, ME

CBSA Code	Urban Area (Constituent Counties)
38900	[1]Portland-Vancouver-Beaverton, OR-WA
	Clackamas County, OR
	Columbia County, OR
	Multnomah County, OR
	Washington County, OR
	Yamhill County, OR
	Clark County, WA
	Skamania County, WA
38940	Port St. Lucie, FL
	Martin County, FL
	St. Lucie County, FL
39100	Poughkeepsie-Newburgh-Middletown, NY
	Dutchess County, NY
	Orange County, NY
39140	Prescott, AZ
	Yavapai County, AZ
39300	[1]Providence-New Bedford-Fall River, RI-MA
	Bristol County, MA
	Bristol County, RI
	Kent County, RI
	Newport County, RI
	Providence County, RI
	Washington County, RI
39340	Provo-Orem, UT
	Juab County, UT
	Utah County, UT
39380	Pueblo, CO
	Pueblo County, CO
39460	Punta Gorda, FL
	Charlotte County, FL
39540	Racine, WI
	Racine County, WI
39580	Raleigh-Cary, NC
	Franklin County, NC
	Johnston County, NC
	Wake County, NC
39660	Rapid City, SD
	Meade County, SD
	Pennington County, SD
39740	Reading, PA
	Berks County, PA
39820	Redding, CA
	Shasta County, CA
39900	Reno-Sparks, NV
	Storey County, NV
	Washoe County, NV
40060	[1]Richmond, VA
	Amelia County, VA
	Caroline County, VA
	Charles City County, VA
	Chesterfield County, VA
	Cumberland County, VA
	Dinwiddie County, VA
	Goochland County, VA
	Hanover County, VA
	Henrico County, VA
	King and Queen County, VA
	King William County, VA
	Louisa County, VA
	New Kent County, VA
	Powhatan County, VA
	Prince George County, VA
	Sussex County, VA
	Colonial Heights City, VA
	Hopewell City, VA
	Petersburg City, VA
	Richmond City, VA
40140	[1]Riverside-San Bernardino-Ontario, CA
	Riverside County, CA
	San Bernardino County, CA
40220	Roanoke, VA
	Botetourt County, VA
	Craig County, VA
	Franklin County, VA
	Roanoke County, VA
	Roanoke City, VA
	Salem City, VA
40340	Rochester, MN
	Dodge County, MN
	Olmsted County, MN
	Wabasha County, MN

CBSA Code	Urban Area (Constituent Counties)
40380	[1]Rochester, NY Livingston County, NY Monroe County, NY Ontario County, NY Orleans County, NY Wayne County, NY
40420	Rockford, IL Boone County, IL Winnebago County, IL
40484	Rockingham County-Strafford County, NH Rockingham County, NH Strafford County, NH
40580	Rocky Mount, NC Edgecombe County, NC Nash County, NC
40660	Rome, GA Floyd County, GA
40900	[1]Sacramento--Arden-Arcade--Roseville, CA El Dorado County, CA Placer County, CA Sacramento County, CA Yolo County, CA
40980	Saginaw-Saginaw Township North, MI Saginaw County, MI
41060	St. Cloud, MN Benton County, MN Stearns County, MN
41100	St. George, UT Washington County, UT
41140	St. Joseph, MO-KS Doniphan County, KS Andrew County, MO Buchanan County, MO DeKalb County, MO
41180	[1]St. Louis, MO-IL Bond County, IL Calhoun County, IL Clinton County, IL Jersey County, IL Macoupin County, IL Madison County, IL Monroe County, IL St. Clair County, IL Crawford County, MO Franklin County, MO Jefferson County, MO Lincoln County, MO St. Charles County, MO St. Louis County, MO Warren County, MO Washington County, MO St. Louis City, MO
41420	Salem, OR Marion County, OR Polk County, OR
41500	Salinas, CA Monterey County, CA
41540	Salisbury, MD Somerset County, MD Wicomico County, MD
41620	Salt Lake City, UT Salt Lake County, UT Summit County, UT Tooele County, UT
41660	San Angelo, TX Irion County, TX Tom Green County, TX
41700	[1]San Antonio, TX Atascosa County, TX Bandera County, TX Bexar County, TX Comal County, TX Guadalupe County, TX Kendall County, TX Medina County, TX Wilson County, TX

CBSA Code	Urban Area (Constituent Counties)
41740	[1]San Diego-Carlsbad-San Marcos, CA
	San Diego County, CA
41780	Sandusky, OH
	Erie County, OH
41884	[1]San Francisco-San Mateo-Redwood City, CA
	Marin County, CA
	San Francisco County, CA
	San Mateo County, CA
41900	San Germán-Cabo Rojo, PR
	Cabo Rojo Municipio, PR
	Lajas Municipio, PR
	Sabana Grande Municipio, PR
	San Germán Municipio, PR
41940	[1]San Jose-Sunnyvale-Santa Clara, CA
	San Benito County, CA
	Santa Clara County, CA

CBSA Code	Urban Area (Constituent Counties)
41980	[1]San Juan-Caguas-Guaynabo, PR
	Aguas Buenas Municipio, PR
	Aibonito Municipio, PR
	Arecibo Municipio, PR
	Barceloneta Municipio, PR
	Barranquitas Municipio, PR
	Bayamón Municipio, PR
	Caguas Municipio, PR
	Camuy Municipio, PR
	Canóvanas Municipio, PR
	Carolina Municipio, PR
	Cataño Municipio, PR
	Cayey Municipio, PR
	Ciales Municipio, PR
	Cidra Municipio, PR
	Comerío Municipio, PR
	Corozal Municipio, PR
	Dorado Municipio, PR
	Florida Municipio, PR
	Guaynabo Municipio, PR
	Gurabo Municipio, PR
	Hatillo Municipio, PR
	Humacao Municipio, PR
	Juncos Municipio, PR
	Las Piedras Municipio, PR
	Loíza Municipio, PR
	Manatí Municipio, PR
	Maunabo Municipio, PR
	Morovis Municipio, PR
	Naguabo Municipio, PR
	Naranjito Municipio, PR
	Orocovis Municipio, PR
	Quebradillas Municipio, PR
	Río Grande Municipio, PR
	San Juan Municipio, PR
	San Lorenzo Municipio, PR
	Toa Alta Municipio, PR
	Toa Baja Municipio, PR
	Trujillo Alto Municipio, PR
	Vega Alta Municipio, PR
	Vega Baja Municipio, PR
	Yabucoa Municipio, PR

CBSA Code	Urban Area (Constituent Counties)
42020	San Luis Obispo-Paso Robles, CA
	San Luis Obispo County, CA
42044	[1]Santa Ana-Anaheim-Irvine, CA
	Orange County, CA
42060	Santa Barbara-Santa Maria-Goleta, CA
	Santa Barbara County, CA
42100	Santa Cruz-Watsonville, CA
	Santa Cruz County, CA
42140	Santa Fe, NM
	Santa Fe County, NM
42220	Santa Rosa-Petaluma, CA
	Sonoma County, CA
42340	Savannah, GA
	Bryan County, GA
	Chatham County, GA
	Effingham County, GA
42540	Scranton--Wilkes-Barre, PA
	Lackawanna County, PA
	Luzerne County, PA
	Wyoming County, PA
42644	[1]Seattle-Bellevue-Everett, WA
	King County, WA
	Snohomish County, WA
42680	Sebastian-Vero Beach, FL
	Indian River County, FL
43100	Sheboygan, WI
	Sheboygan County, WI
43300	Sherman-Denison, TX
	Grayson County, TX
43340	Shreveport-Bossier City, LA
	Bossier Parish, LA
	Caddo Parish, LA
	De Soto Parish, LA
43580	Sioux City, IA-NE-SD
	Woodbury County, IA
	Dakota County, NE
	Dixon County, NE
	Union County, SD
43620	Sioux Falls, SD
	Lincoln County, SD
	McCook County, SD
	Minnehaha County, SD
	Turner County, SD
43780	South Bend-Mishawaka, IN-MI
	St. Joseph County, IN
	Cass County, MI
43900	Spartanburg, SC
	Spartanburg County, SC
44060	Spokane, WA
	Spokane County, WA
44100	Springfield, IL
	Menard County, IL
	Sangamon County, IL
44140	Springfield, MA
	Franklin County, MA
	Hampden County, MA
	Hampshire County, MA
44180	Springfield, MO
	Christian County, MO
	Dallas County, MO
	Greene County, MO
	Polk County, MO
	Webster County, MO
44220	Springfield, OH
	Clark County, OH
44300	State College, PA
	Centre County, PA
44700	Stockton, CA
	San Joaquin County, CA
44940	Sumter, SC
	Sumter County, SC
45060	Syracuse, NY
	Madison County, NY
	Onondaga County, NY
	Oswego County, NY
45104	Tacoma, WA
	Pierce County, WA

CBSA Code	Urban Area (Constituent Counties)
45220	Tallahassee, FL
	Gadsden County, FL
	Jefferson County, FL
	Leon County, FL
	Wakulla County, FL
45300	[1]Tampa-St. Petersburg-Clearwater, FL
	Hernando County, FL
	Hillsborough County, FL
	Pasco County, FL
	Pinellas County, FL
45460	Terre Haute, IN
	Clay County, IN
	Sullivan County, IN
	Vermillion County, IN
	Vigo County, IN
45500	Texarkana, TX-Texarkana, AR
	Miller County, AR
	Bowie County, TX
45780	Toledo, OH
	Fulton County, OH
	Lucas County, OH
	Ottawa County, OH
	Wood County, OH
45820	Topeka, KS
	Jackson County, KS
	Jefferson County, KS
	Osage County, KS
	Shawnee County, KS
	Wabaunsee County, KS
45940	Trenton-Ewing, NJ
	Mercer County, NJ
46060	Tucson, AZ
	Pima County, AZ
46140	Tulsa, OK
	Creek County, OK
	Okmulgee County, OK
	Osage County, OK
	Pawnee County, OK
	Rogers County, OK
	Tulsa County, OK
	Wagoner County, OK

CBSA Code	Urban Area (Constituent Counties)
46220	Tuscaloosa, AL
	Greene County, AL
	Hale County, AL
	Tuscaloosa County, AL
46340	Tyler, TX
	Smith County, TX
46540	Utica-Rome, NY
	Herkimer County, NY
	Oneida County, NY
46660	Valdosta, GA
	Brooks County, GA
	Echols County, GA
	Lanier County, GA
	Lowndes County, GA
46700	Vallejo-Fairfield, CA
	Solano County, CA
47020	Victoria, TX
	Calhoun County, TX
	Goliad County, TX
	Victoria County, TX
47220	Vineland-Millville-Bridgeton, NJ
	Cumberland County, NJ
47260	[1]Virginia Beach-Norfolk-Newport News, VA-NC
	Currituck County, NC
	Gloucester County, VA
	Isle of Wight County, VA
	James City County, VA
	Mathews County, VA
	Surry County, VA
	York County, VA
	Chesapeake City, VA
	Hampton City, VA
	Newport News City, VA
	Norfolk City, VA
	Poquoson City, VA
	Portsmouth City, VA
	Suffolk City, VA
	Virginia Beach City, VA
	Williamsburg City, VA
47300	Visalia-Porterville, CA
	Tulare County, CA

CBSA Code	Urban Area (Constituent Counties)
47380	Waco, TX McLennan County, TX
47580	Warner Robins, GA Houston County, GA
47644	[1]Warren-Troy-Farmington Hills, MI Lapeer County, MI Livingston County, MI Macomb County, MI Oakland County, MI St. Clair County, MI
47894	[1]Washington-Arlington-Alexandria, DC-VA-MD-WV District of Columbia, DC Calvert County, MD Charles County, MD Prince George's County, MD Arlington County, VA Clarke County, VA Fairfax County, VA Fauquier County, VA Loudoun County, VA Prince William County, VA Spotsylvania County, VA Stafford County, VA Warren County, VA Alexandria City, VA Fairfax City, VA Falls Church City, VA Fredericksburg City, VA Manassas City, VA Manassas Park City, VA Jefferson County, WV
47940	Waterloo-Cedar Falls, IA Black Hawk County, IA Bremer County, IA Grundy County, IA
48140	Wausau, WI Marathon County, WI
48260	Weirton-Steubenville, WV-OH Jefferson County, OH Brooke County, WV Hancock County, WV
48300	Wenatchee, WA Chelan County, WA Douglas County, WA
48424	[1]West Palm Beach-Boca Raton-Boynton Beach, FL Palm Beach County, FL
48540	Wheeling, WV-OH Belmont County, OH Marshall County, WV Ohio County, WV
48620	Wichita, KS Butler County, KS Harvey County, KS Sedgwick County, KS Sumner County, KS
48660	Wichita Falls, TX Archer County, TX Clay County, TX Wichita County, TX
48700	Williamsport, PA Lycoming County, PA
48864	Wilmington, DE-MD-NJ New Castle County, DE Cecil County, MD Salem County, NJ
48900	Wilmington, NC Brunswick County, NC New Hanover County, NC Pender County, NC
49020	Winchester, VA-WV Frederick County, VA Winchester City, VA Hampshire County, WV
49180	Winston-Salem, NC Davie County, NC Forsyth County, NC Stokes County, NC Yadkin County, NC
49340	Worcester, MA Worcester County, MA
49420	Yakima, WA Yakima County, WA

CBSA Code	Urban Area (Constituent Counties)
49500	Yauco, PR Guánica Municipio, PR Guayanilla Municipio, PR Peñuelas Municipio, PR Yauco Municipio, PR
49620	York-Hanover, PA York County, PA
49660	Youngstown-Warren-Boardman, OH-PA Mahoning County, OH Trumbull County, OH Mercer County, PA
49700	Yuba City, CA Sutter County, CA Yuba County, CA
49740	Yuma, AZ Yuma County, AZ

[1] Large urban area.

TABLE 4F.--PUERTO RICO WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) BY CBSA--FY 2009

(Note: The rural floor budget neutrality adjustment is not applicable to the Puerto Rico specific wage index.)

CBSA Code	Area	Wage Index	GAF	Wage Index – Reclassified Hospitals	GAF – Reclassified Hospitals
10380	Aguadilla-Isabela-San Sebastián, PR	0.7845	0.8469	------	------
21940	Fajardo, PR	0.9572	0.9705	------	------
25020	Guayama, PR	0.7472	0.8191	------	------
32420	Mayagüez, PR	0.9236	0.9470	------	------
38660	Ponce, PR	0.9757	0.9833	------	------
41900	San Germán-Cabo Rojo, PR	1.0864	1.0584	------	------
41980	San Juan-Caguas-Guaynabo, PR	1.0348	1.0237	------	------
49500	Yauco, PR	0.7969	0.8560	------	------

TABLE 4J.--OUT-MIGRATION ADJUSTMENT--FY 2009

The following list represents all hospitals that are eligible to have their wage index increased by the out-migration adjustment listed in this table. Hospitals cannot receive the out-migration adjustment if they are reclassified under section 1886(d)(10) of the Act, reclassified under section 508 of Pub. L. 108-173, receiving an extended special exception under section 124 of Pub. L. 110-275, or redesignated under section 1886(d)(8)(B) of the Act. Hospitals that have already been reclassified under section 1886(d)(10) of the Act, reclassified under section 508 of Pub. L. 108-173, receiving an extended special exception under section 124 of Pub. L. 110-275, or redesignated under section 1886(d)(8)(B) of the Act are designated with an asterisk. It is important to note that the asterisked information in Table 4J may reflect withdrawal/termination decisions CMS has made on behalf of hospitals. For example, in some cases, CMS may have withdrawn or terminated a reclassification under section 1886(d)(10) of the Act in order for a hospital to receive its home wage index plus an out-migration adjustment. As explained in the preamble to this notice, hospitals have 15 days from the publication of this notice in the Federal Register to reverse a decision CMS has made on its behalf.

Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County Name	County Code
010005	*	0.0296	MARSHALL	01470
010008		0.0174	CRENSHAW	01200
010010	*	0.0296	MARSHALL	01470
010012	*	0.0186	DE KALB	01240
010015		0.0046	CLARKE	01120
010021		0.0052	DALE	01220
010022	*	0.1128	CHEROKEE	01090
010027		0.0026	COFFEE	01150
010029	*	0.0289	LEE	01400
010032		0.0325	RANDOLPH	01550
010035	*	0.0254	CULLMAN	01210
010038		0.0047	CALHOUN	01070
010040		0.0061	ETOWAH	01270
010045		0.0222	FAYETTE	01280
010046		0.0061	ETOWAH	01270
010047		0.0127	BUTLER	01060
010049		0.0026	COFFEE	01150
010052	*	0.0103	TALLAPOOSA	01610
010059	*	0.0071	LAWRENCE	01390
010061	*	0.0542	JACKSON	01350
010065	*	0.0103	TALLAPOOSA	01610
010078		0.0047	CALHOUN	01070
010083	*	0.0134	BALDWIN	01010
010091		0.0046	CLARKE	01120

Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County Name	County Code
010100	*	0.0134	BALDWIN	01010
010101	*	0.0211	TALLADEGA	01600
010109	*	0.0405	PICKENS	01530
010110		0.0215	BULLOCK	01050
010125		0.0476	WINSTON	01660
010128		0.0046	CLARKE	01120
010129		0.0134	BALDWIN	01010
010138		0.0066	SUMTER	01590
010143	*	0.0254	CULLMAN	01210
010146		0.0047	CALHOUN	01070
010150	*	0.0127	BUTLER	01060
010158	*	0.0023	FRANKLIN	01290
010164	*	0.0211	TALLADEGA	01600
030067		0.0298	LAPAZ	03055
040014	*	0.0199	WHITE	04720
040019	*	0.0258	ST. FRANCIS	04610
040039	*	0.0172	GREENE	04270
040047		0.0117	RANDOLPH	04600
040067		0.0007	COLUMBIA	04130
040071	*	0.0149	JEFFERSON	04340
040076	*	0.1000	HOT SPRING	04290
040081		0.0357	PIKE	04540
050002		0.0010	ALAMEDA	05000
050007		0.0146	SAN MATEO	05510
050009		0.0180	NAPA	05380
050013	*	0.0180	NAPA	05380
050014	*	0.0139	AMADOR	05020
050042	*	0.0162	TEHAMA	05620
050043		0.0010	ALAMEDA	05000
050069		0.0013	ORANGE	05400
050070		0.0146	SAN MATEO	05510
050073	*	0.0171	SOLANO	05580
050075		0.0010	ALAMEDA	05000
050084		0.0132	SAN JOAQUIN	05490
050089		0.0011	SAN BERNARDINO	05460
050090		0.0058	SONOMA	05590
050099		0.0011	SAN BERNARDINO	05460
050101	*	0.0171	SOLANO	05580
050113		0.0146	SAN MATEO	05510
050118	*	0.0132	SAN JOAQUIN	05490
050122		0.0132	SAN JOAQUIN	05490
050129		0.0011	SAN BERNARDINO	05460
050133	*	0.0178	YUBA	05680
050136		0.0058	SONOMA	05590
050140		0.0011	SAN BERNARDINO	05460
050150	*	0.0342	NEVADA	05390
050167		0.0132	SAN JOAQUIN	05490
050168		0.0013	ORANGE	05400
050173		0.0013	ORANGE	05400
050174		0.0058	SONOMA	05590
050193		0.0013	ORANGE	05400
050194		0.0052	SANTA CRUZ	05540
050195		0.0010	ALAMEDA	05000
050197	*	0.0146	SAN MATEO	05510
050211		0.0010	ALAMEDA	05000
050224		0.0013	ORANGE	05400
050226		0.0013	ORANGE	05400
050230		0.0013	ORANGE	05400
050242		0.0052	SANTA CRUZ	05540
050245		0.0011	SAN BERNARDINO	05460
050264		0.0010	ALAMEDA	05000
050272		0.0011	SAN BERNARDINO	05460
050279		0.0011	SAN BERNARDINO	05460
050283		0.0010	ALAMEDA	05000
050289		0.0146	SAN MATEO	05510
050291		0.0058	SONOMA	05590
050298		0.0011	SAN BERNARDINO	05460
050300		0.0011	SAN BERNARDINO	05460
050305		0.0010	ALAMEDA	05000
050313		0.0132	SAN JOAQUIN	05490
050320		0.0010	ALAMEDA	05000
050325		0.0033	TUOLUMNE	05650
050327		0.0011	SAN BERNARDINO	05460
050335	*	0.0033	TUOLUMNE	05650
050336		0.0132	SAN JOAQUIN	05490
050348		0.0013	ORANGE	05400
050366		0.0015	CALAVERAS	05040
050367	*	0.0171	SOLANO	05580
050385		0.0058	SONOMA	05590
050426		0.0013	ORANGE	05400
050444		0.0233	MERCED	05340
050476	*	0.0278	LAKE	05160
050488		0.0010	ALAMEDA	05000
050512		0.0010	ALAMEDA	05000
050517		0.0011	SAN BERNARDINO	05460
050526		0.0013	ORANGE	05400

Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County Name	County Code
050528	*	0.0233	MERCED	05340
050541	*	0.0146	SAN MATEO	05510
050543		0.0013	ORANGE	05400
050547		0.0058	SONOMA	05590
050548		0.0013	ORANGE	05400
050551		0.0013	ORANGE	05400
050567		0.0013	ORANGE	05400
050570		0.0013	ORANGE	05400
050580		0.0013	ORANGE	05400
050584		0.0011	SAN BERNARDINO	05460
050586		0.0011	SAN BERNARDINO	05460
050589		0.0013	ORANGE	05400
050603		0.0013	ORANGE	05400
050609		0.0013	ORANGE	05400
050618	*	0.0011	SAN BERNARDINO	05460
050667		0.0180	NAPA	05380
050678		0.0013	ORANGE	05400
050680	*	0.0171	SOLANO	05580
050690		0.0058	SONOMA	05590
050693		0.0013	ORANGE	05400
050714		0.0052	SANTA CRUZ	05540
050720		0.0013	ORANGE	05400
050744		0.0013	ORANGE	05400
050745		0.0013	ORANGE	05400
050746		0.0013	ORANGE	05400
050747		0.0013	ORANGE	05400
050748		0.0132	SAN JOAQUIN	05490
050754		0.0146	SAN MATEO	05510
050758		0.0011	SAN BERNARDINO	05460
060001	*	0.0042	WELD	06610
060003	*	0.0069	BOULDER	06060
060010		0.0153	LARIMER	06340
060027	*	0.0069	BOULDER	06060
060030		0.0153	LARIMER	06340
060103	*	0.0069	BOULDER	06060
060116	*	0.0069	BOULDER	06060
060119		0.0153	LARIMER	06340
070006	*	0.0045	FAIRFIELD	07000
070010		0.0045	FAIRFIELD	07000
070018	*	0.0045	FAIRFIELD	07000
070028		0.0045	FAIRFIELD	07000
070033		0.0045	FAIRFIELD	07000
070034	*	0.0045	FAIRFIELD	07000

Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County Name	County Code
080001	*	0.0044	NEW CASTLE	08010
080003	*	0.0044	NEW CASTLE	08010
090001	*	0.0033	THE DISTRICT	09000
090003		0.0033	THE DISTRICT	09000
090004	*	0.0033	THE DISTRICT	09000
090005		0.0033	THE DISTRICT	09000
090006		0.0033	THE DISTRICT	09000
090008		0.0033	THE DISTRICT	09000
090011	*	0.0033	THE DISTRICT	09000
100014	*	0.0047	VOLUSIA	10630
100017	*	0.0047	VOLUSIA	10630
100045	*	0.0047	VOLUSIA	10630
100047	*	0.0028	CHARLOTTE	10070
100068	*	0.0047	VOLUSIA	10630
100072	*	0.0047	VOLUSIA	10630
100077	*	0.0028	CHARLOTTE	10070
100081	*	0.0022	WALTON	10650
100118	*	0.0177	FLAGLER	10170
100232	*	0.0054	PUTNAM	10530
100236	*	0.0028	CHARLOTTE	10070
100252	*	0.0151	OKEECHOBEE	10460
100290		0.0338	SUMTER	10590
100292	*	0.0022	WALTON	10650
110023	*	0.0416	GORDON	11500
110029	*	0.0052	HALL	11550
110040	*	0.1455	JACKSON	11610
110041	*	0.0623	HABERSHAM	11540
110100		0.0790	JEFFERSON	11620
110101		0.0067	COOK	11311
110142		0.0185	EVANS	11441
110146	*	0.0805	CAMDEN	11170
110150	*	0.0227	BALDWIN	11030
110187	*	0.0643	LUMPKIN	11701
110189	*	0.0066	FANNIN	11450
110190		0.0241	MACON	11710
110205		0.0507	GILMER	11471
130003	*	0.0235	NEZ PERCE	13340
130024		0.0675	BONNER	13080
130049	*	0.0319	KOOTENAI	13270
130066		0.0319	KOOTENAI	13270
130067	*	0.0725	BINGHAM	13050
140001		0.0369	FULTON	14370
140026		0.0315	LA SALLE	14580

Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County Name	County Code
140043	*	0.0056	WHITESIDE	14988
140058	*	0.0126	MORGAN	14770
140110	*	0.0315	LA SALLE	14580
140116		0.0014	MC HENRY	14640
140160	*	0.0332	STEPHENSON	14970
140161		0.0168	LIVINGSTON	14610
140167	*	0.0632	IROQUOIS	14460
140176		0.0014	MC HENRY	14640
140234		0.0315	LA SALLE	14580
150006	*	0.0113	LA PORTE	15450
150015	*	0.0113	LA PORTE	15450
150022		0.0158	MONTGOMERY	15530
150030	*	0.0192	HENRY	15320
150072		0.0105	CASS	15080
150076	*	0.0215	MARSHALL	15490
150088	*	0.0111	MADISON	15470
150091	*	0.0050	HUNTINGTON	15340
150102	*	0.0108	STARKE	15740
150113	*	0.0111	MADISON	15470
150133	*	0.0193	KOSCIUSKO	15420
150146	*	0.0319	NOBLE	15560
160013		0.0179	MUSCATINE	16690
160030		0.0013	STORY	16840
160032		0.0235	JASPER	16490
160080		0.0066	CLINTON	16220
170137	*	0.0421	DOUGLAS	17220
170150		0.0166	COWLEY	17170
180012	*	0.0080	HARDIN	18460
180017	*	0.0035	BARREN	18040
180049	*	0.0488	MADISON	18750
180064		0.0314	MONTGOMERY	18860
180066	*	0.0439	LOGAN	18700
180070		0.0240	GRAYSON	18420
180079		0.0259	HARRISON	18480
190003	*	0.0085	IBERIA	19220
190015	*	0.0243	TANGIPAHOA	19520
190017	*	0.0187	ST. LANDRY	19480
190034		0.0189	VERMILION	19560
190044		0.0261	ACADIA	19000
190050		0.0044	BEAUREGARD	19050
190053		0.0101	JEFFRSON DAVIS	19260
190054		0.0085	IBERIA	19220
190078		0.0187	ST. LANDRY	19480
190086	*	0.0061	LINCOLN	19300
190088	*	0.0387	WEBSTER	19590
190099		0.0189	AVOYELLES	19040
190106	*	0.0102	ALLEN	19010
190116		0.0085	MOREHOUSE	19330
190133		0.0102	ALLEN	19010
190140		0.0035	FRANKLIN	19200
190144	*	0.0387	WEBSTER	19590
190145		0.0090	LA SALLE	19290
190184	*	0.0075	CALDWELL	19100
190190		0.0075	CALDWELL	19100
190191	*	0.0187	ST. LANDRY	19480
190246		0.0075	CALDWELL	19100
190257	*	0.0061	LINCOLN	19300
190277		0.0387	WEBSTER	19590
200024	*	0.0094	ANDROSCOGGIN	20000
200032		0.0367	OXFORD	20080
200034	*	0.0094	ANDROSCOGGIN	20000
200050	*	0.0227	HANCOCK	20040
210001		0.0187	WASHINGTON	21210
210023		0.0079	ANNE ARUNDEL	21010
210028		0.0383	ST. MARYS	21180
210043		0.0079	ANNE ARUNDEL	21010
210061		0.0188	WORCESTER	21230
220001	*	0.0072	WORCESTER	22170
220002		0.0271	MIDDLESEX	22090
220010	*	0.0355	ESSEX	22040
220011		0.0271	MIDDLESEX	22090
220019	*	0.0072	WORCESTER	22170
220025	*	0.0072	WORCESTER	22170
220029	*	0.0355	ESSEX	22040
220033	*	0.0355	ESSEX	22040
220035	*	0.0355	ESSEX	22040
220049		0.0271	MIDDLESEX	22090
220058	*	0.0072	WORCESTER	22170
220062	*	0.0072	WORCESTER	22170
220063		0.0271	MIDDLESEX	22090
220070		0.0271	MIDDLESEX	22090
220080	*	0.0355	ESSEX	22040
220082		0.0271	MIDDLESEX	22090
220084		0.0271	MIDDLESEX	22090
220090	*	0.0072	WORCESTER	22170
220095	*	0.0072	WORCESTER	22170

Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County Name	County Code
220098		0.0271	MIDDLESEX	22090
220101		0.0271	MIDDLESEX	22090
220105		0.0271	MIDDLESEX	22090
220163	*	0.0072	WORCESTER	22170
220171		0.0271	MIDDLESEX	22090
220174	*	0.0355	ESSEX	22040
220175		0.0271	MIDDLESEX	22090
220176	*	0.0072	WORCESTER	22170
230003	*	0.0220	OTTAWA	23690
230005		0.0473	LENAWEE	23450
230013	*	0.0025	OAKLAND	23620
230015		0.0295	ST. JOSEPH	23740
230019	*	0.0025	OAKLAND	23620
230021	*	0.0101	BERRIEN	23100
230022	*	0.0212	BRANCH	23110
230029	*	0.0025	OAKLAND	23620
230035	*	0.0095	MONTCALM	23580
230037	*	0.0210	HILLSDALE	23290
230047	*	0.0021	MACOMB	23490
230069	*	0.0210	LIVINGSTON	23460
230071	*	0.0025	OAKLAND	23620
230072	*	0.0220	OTTAWA	23690
230075		0.0047	CALHOUN	23120
230078	*	0.0101	BERRIEN	23100
230092	*	0.0223	JACKSON	23370
230093		0.0058	MECOSTA	23530
230096	*	0.0295	ST. JOSEPH	23740
230099	*	0.0231	MONROE	23570
230121	*	0.0678	SHIAWASSEE	23770
230130	*	0.0025	OAKLAND	23620
230151	*	0.0025	OAKLAND	23620
230174	*	0.0220	OTTAWA	23690
230195	*	0.0021	MACOMB	23490
230204	*	0.0021	MACOMB	23490
230207	*	0.0025	OAKLAND	23620
230208	*	0.0095	MONTCALM	23580
230217		0.0047	CALHOUN	23120
230222	*	0.0035	MIDLAND	23550
230223	*	0.0025	OAKLAND	23620
230227	*	0.0021	MACOMB	23490
230254	*	0.0025	OAKLAND	23620
230257	*	0.0021	MACOMB	23490
230264	*	0.0021	MACOMB	23490
230269	*	0.0025	OAKLAND	23620
230277	*	0.0025	OAKLAND	23620
230279	*	0.0210	LIVINGSTON	23460
230301	*	0.0025	OAKLAND	23620
240018		0.0805	GOODHUE	24240
240044		0.0625	WINONA	24840
240064	*	0.0134	ITASCA	24300
240069	*	0.0267	STEELE	24730
240071	*	0.0385	RICE	24650
240117		0.0527	MOWER	24490
240211		0.0812	PINE	24570
250023	*	0.0541	PEARL RIVER	25540
250040	*	0.0021	JACKSON	25290
250117	*	0.0541	PEARL RIVER	25540
250128		0.0446	PANOLA	25530
250162		0.0014	HANCOCK	25220
260059		0.0077	LACLEDE	26520
260064		0.0089	AUDRAIN	26030
260097		0.0300	JOHNSON	26500
260116		0.0087	ST. FRANCOIS	26930
260163		0.0087	ST. FRANCOIS	26930
280077		0.0080	DODGE	28260
280123		0.0123	GAGE	28330
290002	*	0.0277	LYON	29090
300011	*	0.0049	HILLSBOROUGH	30050
300012	*	0.0049	HILLSBOROUGH	30050
300017	*	0.0075	ROCKINGHAM	30070
300020	*	0.0049	HILLSBOROUGH	30050
300023	*	0.0075	ROCKINGHAM	30070
300029	*	0.0075	ROCKINGHAM	30070
300034	*	0.0049	HILLSBOROUGH	30050
310002	*	0.0268	ESSEX	31200
310009	*	0.0268	ESSEX	31200
310015	*	0.0199	MORRIS	31300
310017	*	0.0199	MORRIS	31300
310018	*	0.0268	ESSEX	31200
310038	*	0.0209	MIDDLESEX	31270
310039	*	0.0209	MIDDLESEX	31270
310050	*	0.0199	MORRIS	31300
310054	*	0.0268	ESSEX	31200
310070	*	0.0209	MIDDLESEX	31270
310076	*	0.0268	ESSEX	31200
310083	*	0.0268	ESSEX	31200

Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County Name	County Code
310093	*	0.0268	ESSEX	31200
310096	*	0.0268	ESSEX	31200
310108	*	0.0209	MIDDLESEX	31270
310119	*	0.0268	ESSEX	31200
320003	*	0.0480	SAN MIGUEL	32230
320011		0.0337	RIO ARRIBA	32190
320018		0.0024	DONA ANA	32060
320085		0.0024	DONA ANA	32060
330004	*	0.0633	ULSTER	33740
330008	*	0.0126	WYOMING	33900
330010		0.0067	MONTGOMERY	33380
330027		0.0123	NASSAU	33400
330033		0.0223	CHENANGO	33080
330047		0.0067	MONTGOMERY	33380
330073	*	0.0151	GENESEE	33290
330094	*	0.0503	COLUMBIA	33200
330103	*	0.0131	CATTARAUGUS	33040
330106	*	0.0123	NASSAU	33400
330126	*	0.0642	ORANGE	33540
330132		0.0131	CATTARAUGUS	33040
330135	*	0.0642	ORANGE	33540
330144		0.0056	STEUBEN	33690
330151		0.0056	STEUBEN	33690
330167		0.0123	NASSAU	33400
330175		0.0260	CORTLAND	33210
330181		0.0123	NASSAU	33400
330182		0.0123	NASSAU	33400
330191	*	0.0017	WARREN	33750
330198		0.0123	NASSAU	33400
330205	*	0.0642	ORANGE	33540
330224	*	0.0633	ULSTER	33740
330225		0.0123	NASSAU	33400
330235	*	0.0306	CAYUGA	33050
330259		0.0123	NASSAU	33400
330264	*	0.0642	ORANGE	33540
330276		0.0036	FULTON	33280
330277	*	0.0056	STEUBEN	33690
330331		0.0123	NASSAU	33400
330332		0.0123	NASSAU	33400
330372		0.0123	NASSAU	33400
330386	*	0.0745	SULLIVAN	33710
340020		0.0156	LEE	34520
340021	*	0.0162	CLEVELAND	34220
340024		0.0177	SAMPSON	34810
340027	*	0.0128	LENOIR	34530
340037		0.0162	CLEVELAND	34220
340038		0.0253	BEAUFORT	34060
340039	*	0.0101	IREDELL	34480
340068	*	0.0087	COLUMBUS	34230
340069	*	0.0015	WAKE	34910
340070	*	0.0395	ALAMANCE	34000
340071	*	0.0226	HARNETT	34420
340073	*	0.0015	WAKE	34910
340085	*	0.0250	DAVIDSON	34280
340096	*	0.0250	DAVIDSON	34280
340104		0.0162	CLEVELAND	34220
340114	*	0.0015	WAKE	34910
340126	*	0.0100	WILSON	34970
340129	*	0.0101	IREDELL	34480
340133		0.0260	MARTIN	34580
340138	*	0.0015	WAKE	34910
340144	*	0.0101	IREDELL	34480
340145	*	0.0336	LINCOLN	34540
340151		0.0052	HALIFAX	34410
340173	*	0.0015	WAKE	34910
360002		0.0141	ASHLAND	36020
360010	*	0.0074	TUSCARAWAS	36800
360013	*	0.0135	SHELBY	36760
360025	*	0.0077	ERIE	36220
360036	*	0.0126	WAYNE	36860
360040		0.0387	KNOX	36430
360044		0.0127	DARKE	36190
360065	*	0.0075	HURON	36400
360070		0.0005	STARK	36770
360071		0.0035	VAN WERT	36820
360084		0.0005	STARK	36770
360086	*	0.0186	CLARK	36110
360096	*	0.0071	COLUMBIANA	36140
360100		0.0005	STARK	36770
360107	*	0.0119	SANDUSKY	36730
360125	*	0.0133	ASHTABULA	36030
360131		0.0005	STARK	36770
360151		0.0005	STARK	36770
360156		0.0119	SANDUSKY	36730
360175	*	0.0183	CLINTON	36130
360185	*	0.0071	COLUMBIANA	36140

Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County Name	County Code
360187	*	0.0186	CLARK	36110
360245	*	0.0133	ASHTABULA	36030
370014	*	0.0361	BRYAN	37060
370015	*	0.0366	MAYES	37480
370023		0.0090	STEPHENS	37680
370065		0.0096	CRAIG	37170
370072		0.0258	LATIMER	37380
370083		0.0051	PUSHMATAHA	37630
370100		0.0100	CHOCTAW	37110
370149	*	0.0302	POTTAWATOMIE	37620
370156		0.0121	GARVIN	37240
370169		0.0163	MCINTOSH	37450
370172		0.0258	LATIMER	37380
370214		0.0121	GARVIN	37240
380022	*	0.0067	LINN	38210
390008		0.0060	LAWRENCE	39450
390016	*	0.0060	LAWRENCE	39450
390030	*	0.0284	SCHUYLKILL	39650
390031	*	0.0284	SCHUYLKILL	39650
390044	*	0.0191	BERKS	39110
390052		0.0047	CLEARFIELD	39230
390056		0.0036	HUNTINGDON	39380
390065	*	0.0532	ADAMS	39000
390066	*	0.0372	LEBANON	39460
390079	*	0.0003	BRADFORD	39130
390086	*	0.0047	CLEARFIELD	39230
390096	*	0.0191	BERKS	39110
390110	*	0.0003	CAMBRIA	39160
390113	*	0.0053	CRAWFORD	39260
390117		0.0002	BEDFORD	39100
390122		0.0053	CRAWFORD	39260
390125		0.0022	WAYNE	39760
390130	*	0.0003	CAMBRIA	39160
390138	*	0.0218	FRANKLIN	39350
390146		0.0022	WARREN	39740
390150		0.0031	GREENE	39370
390151	*	0.0218	FRANKLIN	39350
390162	*	0.0217	NORTHAMPTON	39590
390183	*	0.0284	SCHUYLKILL	39650
390201		0.1170	MONROE	39550
390236		0.0003	BRADFORD	39130
390313	*	0.0284	SCHUYLKILL	39650
390316		0.0191	BERKS	39110

Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County Name	County Code
420002		0.0001	YORK	42450
420007	*	0.0027	SPARTANBURG	42410
420009	*	0.0113	OCONEE	42360
420019		0.0158	CHESTER	42110
420020	*	0.0008	GEORGETOWN	42210
420027		0.0108	ANDERSON	42030
420030	*	0.0069	COLLETON	42140
420036	*	0.0064	LANCASTER	42280
420039	*	0.0110	UNION	42430
420043		0.0157	CHEROKEE	42100
420053		0.0035	NEWBERRY	42350
420054		0.0002	MARLBORO	42340
420062	*	0.0109	CHESTERFIELD	42120
420068	*	0.0027	ORANGEBURG	42370
420069	*	0.0052	CLARENDON	42130
420070	*	0.0051	SUMTER	42420
420082		0.0002	AIKEN	42010
420083	*	0.0027	SPARTANBURG	42410
420098	*	0.0008	GEORGETOWN	42210
430008	*	0.0535	BROOKINGS	43050
430048	*	0.0129	LAWRENCE	43400
430094		0.0129	LAWRENCE	43400
440007		0.0219	COFFEE	44150
440008	*	0.0449	HENDERSON	44380
440012		0.0009	SULLIVAN	44810
440016		0.0144	CARROLL	44080
440017		0.0009	SULLIVAN	44810
440024	*	0.0230	BRADLEY	44050
440025	*	0.0009	GREENE	44290
440031		0.0019	ROANE	44720
440033		0.0027	CAMPBELL	44060
440035	*	0.0301	MONTGOMERY	44620
440047		0.0338	GIBSON	44260
440050		0.0009	GREENE	44290
440051		0.0082	MC NAIRY	44540
440057		0.0021	CLAIBORNE	44120
440060	*	0.0338	GIBSON	44260
440070		0.0109	DECATUR	44190
440081		0.0052	SEVIER	44770
440084		0.0025	MONROE	44610
440109		0.0070	HARDIN	44350
440115		0.0338	GIBSON	44260
440137		0.0738	BEDFORD	44010

Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County Name	County Code
440144	*	0.0219	COFFEE	44150
440148	*	0.0296	DE KALB	44200
440174		0.0312	HAYWOOD	44370
440176		0.0009	SULLIVAN	44810
440180		0.0027	CAMPBELL	44060
440181		0.0365	HARDEMAN	44340
440182		0.0144	CARROLL	44080
440185	*	0.0230	BRADLEY	44050
450032		0.0254	HARRISON	45620
450039	*	0.0024	TARRANT	45910
450052	*	0.0276	BOSQUE	45160
450059		0.0075	COMAL	45320
450064	*	0.0024	TARRANT	45910
450087	*	0.0024	TARRANT	45910
450090		0.0650	COOKE	45340
450099	*	0.0145	GRAY	45563
450135	*	0.0024	TARRANT	45910
450137	*	0.0024	TARRANT	45910
450144		0.0559	ANDREWS	45010
450163		0.0054	KLEBERG	45743
450192		0.0271	HILL	45651
450194		0.0213	CHEROKEE	45281
450210		0.0151	PANOLA	45842
450224	*	0.0195	WOOD	45974
450236		0.0389	HOPKINS	45654
450270		0.0271	HILL	45651
450283	*	0.0653	VAN ZANDT	45947
450324	*	0.0132	GRAYSON	45564
450347	*	0.0370	WALKER	45949
450348	*	0.0059	FALLS	45500
450370		0.0235	COLORADO	45312
450389	*	0.0618	HENDERSON	45640
450393	*	0.0132	GRAYSON	45564
450395	*	0.0441	POLK	45850
450419	*	0.0024	TARRANT	45910
450438		0.0235	COLORADO	45312
450451		0.0536	SOMERVELL	45893
450460		0.0053	TYLER	45942
450469	*	0.0132	GRAYSON	45564
450497		0.0375	MONTAGUE	45800
450539		0.0067	HALE	45582
450547	*	0.0195	WOOD	45974
450563	*	0.0024	TARRANT	45910
450565	*	0.0509	PALO PINTO	45841
450573		0.0126	JASPER	45690
450596	*	0.0743	HOOD	45653
450615		0.0033	CASS	45260
450639	*	0.0024	TARRANT	45910
450641		0.0375	MONTAGUE	45800
450672	*	0.0024	TARRANT	45910
450675	*	0.0024	TARRANT	45910
450677	*	0.0024	TARRANT	45910
450698		0.0127	LAMB	45751
450747	*	0.0126	ANDERSON	45000
450755		0.0276	HOCKLEY	45652
450770	*	0.0182	MILAM	45795
450779	*	0.0024	TARRANT	45910
450813	*	0.0126	ANDERSON	45000
450838		0.0126	JASPER	45690
450872	*	0.0024	TARRANT	45910
450880	*	0.0024	TARRANT	45910
450884		0.0049	UPSHUR	45943
450886	*	0.0024	TARRANT	45910
450888		0.0024	TARRANT	45910
460017		0.0383	BOX ELDER	46010
460039	*	0.0383	BOX ELDER	46010
490019	*	0.1088	CULPEPER	49230
490084		0.0187	ESSEX	49280
490110		0.0185	MONTGOMERY	49600
500003	*	0.0166	SKAGIT	50280
500007	*	0.0166	SKAGIT	50280
500019		0.0131	LEWIS	50200
500039	*	0.0094	KITSAP	50170
500041		0.0020	COWLITZ	50070
510012		0.0124	MASON	51260
510018	*	0.0188	JACKSON	51170
510047	*	0.0269	MARION	51240
520028	*	0.0286	GREEN	52220
520035		0.0076	SHEBOYGAN	52580
520044		0.0076	SHEBOYGAN	52580
520057		0.0193	SAUK	52550
520059	*	0.0195	RACINE	52500
520071	*	0.0161	JEFFERSON	52270
520076	*	0.0146	DODGE	52130
520095		0.0193	SAUK	52550
520096	*	0.0195	RACINE	52500

Provider Number	Reclassified for FY 2009	Out-Migration Adjustment	Qualifying County Name	County Code
520102	*	0.0242	WALWORTH	52630
520116	*	0.0161	JEFFERSON	52270
670015		0.0024	TARRANT	45910
670023		0.0024	TARRANT	45910

TABLE 9A.--HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS--FY 2009

Provider Number	Geographic CBSA	Reclassified CBSA	LUGAR
010001	20020	10500	
010005	01	13820	
010009	19460	26620	
010010	01	13820	
010012	01	40660	
010022	01	12060	
010025	01	17980	
010029	12220	17980	
010035	01	13820	
010052	01	33860	
010054	19460	26620	
010055	20020	37460	
010059	19460	26620	
010061	01	16860	
010065	01	13820	
010083	01	37860	
010085	19460	26620	
010090	33660	37700	
010100	01	37860	
010101	01	13820	
010102	01	33860	
010118	01	33860	
010126	01	33860	
010143	01	13820	
010158	01	22520	
010164	01	13820	
030007	39140	22380	LUGAR
030033	03	22380	
030055	29420	39140	
030069	29420	40140	
030101	29420	29820	
040014	04	30780	
040017	04	22220	
040019	04	32820	
040020	27860	32820	
040027	04	44180	
040039	04	26	
040041	04	30780	
040069	04	32820	
040071	38220	30780	
040076	04	30780	LUGAR
040080	04	27860	
040085	04	32820	
040088	04	33740	
040091	04	45500	
040119	04	30780	
050006	05	39820	
050014	05	40900	
050022	40140	42044	
050038	41940	42100	
050042	05	39820	
050046	37100	31084	
050054	40140	42044	
050071	41940	42100	
050073	46700	36084	
050076	41884	36084	
050082	37100	31084	
050101	46700	36084	
050102	40140	42044	
050118	44700	33700	
050125	41940	42100	
050131	41884	36084	
050133	49700	40900	
050150	05	40900	

Provider Number	Geographic CBSA	Reclassified CBSA	LUGAR
050153	41940	42100	
050159	37100	31084	
050188	41940	42100	
050197	41884	41940	
050236	37100	31084	
050243	40140	42044	
050292	40140	42044	
050301	05	42220	
050308	41940	42100	
050329	40140	42044	
050335	05	33700	
050360	41884	36084	
050367	46700	36084	
050380	41940	42100	
050390	40140	42044	
050394	37100	31084	
050423	40140	42044	
050441	41940	42100	
050476	05	42220	
050534	40140	42044	
050541	41884	41940	
050573	40140	42044	
050604	41940	42100	
050616	37100	31084	
050662	41940	42100	
050680	46700	36084	
050684	40140	42044	
050686	40140	42044	
050688	41940	42100	
050694	40140	42044	
050701	40140	42044	
050749	37100	31084	
060001	24540	19740	
060003	14500	19740	
060012	39380	17820	
060023	24300	19740	
060027	14500	19740	
060031	17820	19740	
060049	06	22660	
060096	06	19740	
060103	14500	19740	
060116	14500	19740	
070003	07	25540	LUGAR
070011	07	25540	
070015	07	35644	
070038	35300	35004	
080001	48864	37964	
080003	48864	37964	
080004	20100	48864	
080006	08	20100	
080007	08	36140	
090001	47894	13644	
090004	47894	13644	
090011	47894	13644	
100002	48424	22744	
100014	19660	36740	
100017	19660	36740	
100022	33124	22744	
100023	10	36740	
100024	10	33124	
100045	19660	36740	
100047	39460	14600	
100049	10	29460	
100068	19660	36740	
100072	19660	36740	
100077	39460	14600	
100080	48424	22744	
100081	10	23020	LUGAR
100105	42680	38940	
100109	10	36740	
100130	48424	22744	
100139	10	23540	LUGAR
100150	10	33124	
100156	10	23540	

Provider Number	Geographic CBSA	Reclassified CBSA	LUGAR
100157	29460	45300	
100160	10	33124	
100168	48424	22744	
100176	48424	22744	
100217	42680	38940	
100232	10	23540	
100234	48424	22744	
100236	39460	14600	
100249	10	45300	
100252	10	38940	
100253	48424	22744	
100258	48424	22744	
100268	48424	22744	
100269	48424	22744	
100275	48424	22744	
100287	48424	22744	
100288	48424	22744	
100292	10	23020	LUGAR
110001	19140	16860	
110002	11	12060	
110016	11	17980	
110023	11	12060	
110029	23580	12060	
110038	11	45220	
110040	11	12060	LUGAR
110041	11	12060	
110054	40660	12060	
110069	47580	31420	
110075	11	42340	
110095	11	10500	
110112	11	10500	
110121	11	45220	
110122	46660	45220	
110125	11	31420	
110128	11	42340	
110146	11	27260	
110150	11	12060	
110153	47580	31420	
110168	40660	12060	
110187	11	12060	LUGAR
110189	11	12060	
120028	12	26180	
130002	13	14260	
130003	30300	28420	
130049	17660	44060	
130067	13	26820	LUGAR
140012	14	16974	
140015	14	41180	
140032	14	41180	
140034	14	41180	
140040	14	37900	
140043	14	19340	
140046	14	41180	
140058	14	41180	
140064	14	37900	
140110	14	16974	
140135	19500	16580	
140143	14	16974	
140160	14	40420	
140164	14	41180	
150002	23844	16974	
150004	23844	16974	
150006	33140	43780	
150008	23844	16974	
150011	15	26900	
150015	33140	23844	
150023	45460	26900	
150030	15	26900	LUGAR
150035	23844	16974	
150042	15	14020	
150045	15	23060	
150048	15	17140	
150051	14020	26900	
150065	15	26900	

Provider Number	Geographic CBSA	Reclassified CBSA	LUGAR
150069	15	17140	
150076	15	43780	
150088	11300	26900	
150090	23844	16974	
150091	15	23060	
150102	15	23844	LUGAR
150113	11300	26900	
150115	15	21780	
150125	23844	16974	
150126	23844	16974	
150133	15	43780	
150146	15	21140	
150147	23844	16974	
160001	16	11180	
160016	16	11180	
160057	16	26980	
160089	16	26980	
160147	16	11180	
170006	17	27900	
170012	17	48620	
170013	17	48620	
170020	17	48620	
170023	17	48620	
170068	17	11100	
170120	17	27900	
170142	17	45820	
170175	17	48620	
170190	17	45820	
170193	17	48620	
180002	18	49	
180005	18	26580	
180011	18	30460	
180012	21060	31140	
180013	14540	34980	
180017	18	21060	
180024	18	31140	
180027	18	17300	
180029	18	30460	
180043	18	44	
180044	18	26580	
180048	18	31140	
180049	18	30460	
180050	18	28700	
180066	18	34980	
180069	18	26580	
180078	18	26580	
180080	18	28940	
180093	18	21780	
180102	18	17300	
180104	18	17300	
180116	18	14	
180124	14540	34980	
180127	18	31140	
180132	18	30460	
190003	19	29180	
190015	19	35380	
190017	19	29180	
190086	19	33740	
190088	19	43340	
190106	19	10780	
190144	19	43340	
190164	19	45	
190167	19	29180	
190184	19	33740	
190191	19	29180	
190208	19	04	
190257	19	33740	
200020	38860	40484	
200024	30340	38860	
200034	30340	38860	
200039	20	38860	
200050	20	12620	
220001	49340	14484	
220008	39300	14484	

Provider Number	Geographic CBSA	Reclassified CBSA	LUGAR
220010	37764	14484	
220019	49340	14484	
220020	39300	14484	
220025	49340	14484	
220029	37764	14484	
220033	37764	14484	
220035	37764	14484	
220058	49340	14484	
220062	49340	14484	
220073	39300	14484	
220074	39300	14484	
220077	44140	25540	
220080	37764	14484	
220090	49340	14484	
220095	49340	14484	
220163	49340	14484	
220174	37764	14484	
220176	49340	14484	
230002	19804	11460	
230021	35660	28020	
230022	23	29620	
230030	23	40980	
230035	23	24340	LUGAR
230037	23	11460	
230047	47644	19804	
230054	23	24580	
230069	47644	22420	
230077	40980	22420	
230080	23	13020	
230092	27100	11460	
230095	23	13020	
230096	23	28020	
230099	33780	11460	
230105	23	13020	
230121	23	29620	LUGAR
230142	19804	11460	
230195	47644	19804	
230204	47644	19804	
230208	23	24340	LUGAR
230222	23	13020	
230227	47644	19804	
230244	19804	11460	
230257	47644	19804	
230264	47644	19804	
230279	47644	22420	
230301	47644	19804	
240030	24	41060	
240064	24	20260	
240069	24	33460	
240071	24	33460	
240075	24	41060	
240088	24	41060	
240093	24	33460	
240187	24	33460	
250004	25	32820	
250006	25	32820	
250009	25	27180	
250023	25	25060	LUGAR
250031	25	27140	
250034	25	32820	
250040	37700	25060	
250042	25	32820	
250044	25	22520	
250069	25	46220	
250081	25	46220	
250082	25	38220	
250094	25620	25060	
250097	25	12940	
250099	25	27140	
250100	25	46220	
250104	25	46220	
250117	25	25060	LUGAR
260009	26	28140	
260015	26	27860	

Provider Number	Geographic CBSA	Reclassified CBSA	LUGAR
260017	26	27620	
260022	26	16	
260025	26	41180	
260050	26	41140	
260074	26	17860	
260094	26	44180	
260110	26	44180	
260113	26	14	
260119	26	27860	
260175	26	28140	
260183	26	41180	
260186	26	27620	
270003	27	24500	
270014	33540	17660	
270017	27	33540	
270051	27	33540	
280009	28	30700	
280023	28	30700	
280032	28	30700	
280061	28	53	
280065	28	24540	
280125	28	43580	
290002	29	16180	LUGAR
290006	29	39900	
290008	29	41620	
290019	16180	39900	
300001	30	31700	
300011	31700	49340	
300012	31700	49340	
300017	40484	37764	
300019	30	15764	
300020	31700	49340	
300023	40484	37764	
300029	40484	37764	
300034	31700	49340	
310002	35084	35644	
310009	35084	35644	
310014	15804	37964	
310015	35084	35644	
310017	35084	35644	
310018	35084	35644	
310022	15804	37964	
310029	15804	37964	
310031	15804	20764	
310032	47220	48864	
310038	20764	35644	
310039	20764	35644	
310048	20764	35084	
310054	35084	35644	
310070	20764	35644	
310076	35084	35644	
310081	15804	37964	
310083	35084	35644	
310086	15804	37964	
310093	35084	35644	
310096	35084	35644	
310108	20764	35644	
310119	35084	35644	
320003	32	42140	
320005	22140	10740	
320006	32	10740	
320013	32	42140	
320033	32	42140	LUGAR
320063	32	36220	
320065	32	36220	
330004	28740	39100	
330008	33	15380	LUGAR
330073	33	40380	LUGAR
330079	33	47	
330085	33	45060	
330090	21300	27060	
330094	33	38340	
330103	33	39	
330136	33	45060	

Provider Number	Geographic CBSA	Reclassified CBSA	LUGAR
330157	33	45060	
330191	24020	10580	
330224	28740	39100	
330229	33	21500	
330239	33	21500	
330250	33	15540	
330277	33	27060	
330386	33	35084	
340008	34	22180	
340010	24140	39580	
340013	34	16740	
340014	49180	24660	
340015	34	16740	
340021	34	16740	
340023	11700	24860	
340027	34	24780	
340039	34	16740	
340047	49180	24660	
340050	34	22180	
340051	34	25860	
340068	34	34820	
340069	39580	20500	
340070	15500	24660	
340071	34	39580	LUGAR
340073	39580	20500	
340085	34	24660	LUGAR
340096	34	24660	LUGAR
340109	34	47260	
340114	39580	20500	
340115	34	20500	
340126	34	39580	
340127	34	20500	LUGAR
340129	34	16740	
340131	34	24780	
340138	39580	20500	
340144	34	16740	
340145	34	16740	LUGAR
340147	40580	39580	
340148	49180	24660	
340173	39580	20500	
350009	35	22020	
360008	36	26580	
360010	36	10420	
360011	36	18140	
360013	36	30620	
360014	36	18140	
360019	10420	17460	
360020	10420	17460	
360025	41780	45780	
360027	10420	17460	
360036	36	17460	
360039	36	18140	
360054	36	26580	
360065	36	17460	
360078	10420	17460	
360086	44220	19380	
360095	36	45780	
360096	36	49660	LUGAR
360107	36	45780	
360121	36	45780	
360150	10420	17460	
360159	36	18140	
360175	36	18140	
360185	36	49660	LUGAR
360187	44220	19380	
360197	36	18140	
360211	48260	38300	
360245	36	17460	LUGAR
360253	19380	17140	
370004	37	27900	
370006	37	48620	
370014	37	43300	
370015	37	46140	
370016	37	36420	

Provider Number	Geographic CBSA	Reclassified CBSA	LUGAR
370018	37	46140	
370025	37	46140	
370026	37	36420	
370030	37	46140	
370047	37	36420	
370049	37	36420	
370113	37	22220	
370149	37	36420	
380001	38	38900	
380022	38	18700	LUGAR
380027	38	21660	
380050	38	32780	
380051	41420	38900	
390006	39	25420	
390013	39	25420	
390016	39	49660	
390030	39	39740	LUGAR
390031	39	39740	LUGAR
390044	39740	37964	
390046	49620	29540	
390048	39	25420	
390065	39	13644	
390066	30140	25420	
390071	39	48700	LUGAR
390079	39	13780	
390086	39	27780	
390091	39	49660	
390093	39	49660	
390096	39740	37964	
390110	27780	38300	
390113	39	49660	
390138	39	25420	
390151	39	13644	
390162	10900	35084	
390313	39	39740	LUGAR
410001	39300	14484	
410004	39300	14484	
410005	39300	14484	
410007	39300	14484	
410010	39300	14484	
410011	39300	14484	
410012	39300	14484	
410013	39300	35980	
420007	43900	24860	
420009	42	24860	LUGAR
420020	42	16700	
420030	42	16700	
420036	42	16740	
420039	42	43900	LUGAR
420062	42	16740	
420067	42	42340	
420068	42	12260	
420069	42	44940	LUGAR
420070	44940	17900	
420071	42	24860	
420080	42	42340	
420083	43900	24860	
420085	34820	48900	
420098	42	34820	
430012	43	43620	
430014	43	22020	
430077	39660	16220	
440002	27180	32820	
440008	44	27180	
440020	44	26620	
440024	17420	16860	
440025	44	34	
440035	17300	34980	
440056	34100	28940	
440059	44	34980	
440060	44	27180	
440067	34100	28700	
440068	44	16860	
440072	44	32820	

Provider Number	Geographic CBSA	Reclassified CBSA	LUGAR
440073	44	34980	
440144	44	34980	
440148	44	34980	
440151	44	34980	
440185	17420	16860	
440192	44	34980	
450007	45	41700	
450039	23104	19124	
450064	23104	19124	
450080	45	19124	
450087	23104	19124	
450099	45	11100	
450135	23104	19124	
450137	23104	19124	
450148	23104	19124	
450178	45	36220	
450187	45	26420	
450196	45	19124	
450211	45	30980	
450214	45	26420	
450224	45	46340	
450283	45	19124	LUGAR
450324	43300	19124	
450347	45	26420	
450351	45	23104	
450389	45	19124	LUGAR
450393	43300	19124	
450395	45	26420	
450419	23104	19124	
450447	45	19124	
450465	45	26420	
450469	43300	19124	
450484	45	30980	
450508	45	30980	
450547	45	19124	
450563	23104	19124	
450565	45	23104	
450596	45	23104	
450639	23104	19124	
450656	45	30980	
450672	23104	19124	
450675	23104	19124	
450677	23104	19124	
450747	45	46340	
450770	45	12420	LUGAR
450779	23104	19124	
450813	45	41700	
450830	45	36220	
450872	23104	19124	
450880	23104	19124	
450886	23104	19124	
460004	36260	41620	
460005	36260	41620	
460007	46	41100	
460021	41100	29820	
460026	46	39340	
460039	46	30860	
460041	36260	41620	
460042	36260	41620	
470001	47	30	
470012	47	38340	
490004	25500	16820	
490005	49020	47894	
490013	49	20500	
490018	49	16820	
490019	49	47894	
490042	13980	40220	
490043	47894	13644	
490063	47894	13644	
490079	49	24660	
490097	49	40060	
490101	47894	13644	
490107	47894	13644	
490122	47894	13644	

Provider Number	Geographic CBSA	Reclassified CBSA	LUGAR
500002	50	28420	
500003	34580	42644	
500007	34580	42644	
500016	48300	42644	
500021	45104	42644	
500031	50	36500	
500039	14740	42644	
500072	50	14740	
500079	45104	42644	
500108	45104	42644	
500129	45104	42644	
510001	34060	38300	
510002	51	40220	
510006	51	34060	
510018	51	16620	LUGAR
510024	34060	38300	
510046	51	13980	
510047	51	38300	
510050	48540	38300	
510062	51	16620	
510070	51	16620	
510071	51	13980	
510077	51	26580	
520002	52	48140	
520013	20740	33460	
520028	52	31540	LUGAR
520037	52	48140	
520059	39540	33340	
520071	52	33340	LUGAR
520076	52	31540	
520096	39540	33340	
520102	52	33340	LUGAR
520107	52	22540	
520113	52	24580	
520116	52	33340	LUGAR
530014	16940	24540	

TABLE 9B.--HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL UNDER SECTION 508 OF PUB. L. 108-173 AND SPECIAL EXCEPTIONS WAGE INDEX ASSIGNMENTS--FY 2009

Provider Number	Note	GEO CBSA	Wage Index CBSA Section 508 reclassification	Own Wage Index
010150		01	17980	
020008		02	-------	1.2050
050494		05	42220	
050549		37100	42220	
060057		06	19740	
060075		06	-----	1.3866
070001		35300	35004	
070005		35300	35004	
070006	*	14860	35644	
070016		35300	35004	
070017		35300	35004	
070018	*	14860	35644	
070019		35300	35004	
070022		35300	35004	
070031		35300	35004	
070034	*	14860	35644	
070039		35300	35004	
120025		12	26180	
150034		23844	16974	
160040		47940	16300	
160064		16	------	1.5604
160067		47940	16300	
160110		47940	16300	
190218		19	43340	
220046		38340	14484	
230003		26100	28020	
230004		34740	28020	
230013		47644	22420	
230019		47644	22420	
230020		19804	11460	
230024		19804	11460	
230029		47644	22420	
230036		23	22420	

Provider Number	Note	GEO CBSA	Wage Index CBSA Section 508 reclassification	Own Wage Index
230038		24340	28020	
230053		19804	11460	
230059		24340	28020	
230066		34740	28020	
230071		47644	22420	
230072		26100	28020	
230089		19804	11460	
230097		23	28020	
230104		19804	11460	
230106		24340	28020	
230119		19804	11460	
230130		47644	22420	
230135		19804	11460	
230146		19804	11460	
230151		47644	22420	
230165		19804	11460	
230174		26100	28020	
230176		19804	11460	
230207		47644	22420	
230223		47644	22420	
230236		24340	28020	
230254		47644	22420	
230269		47644	22420	
230270		19804	11460	
230273		19804	11460	
230277		47644	22420	
250002		25	25060	
250078	*	25620	25060	
250122		25	25060	
270002	*	27	33540	
270012	*	24500	33540	
270021		27	13740	
270023		33540	13740	
270032		27	13740	
270050		27	13740	
270057		27	13740	
310021		45940	35644	
310028		35084	35644	
310050		35084	35644	
310051		35084	35644	
310060		10900	35644	
310115		10900	35644	
310120		35084	35644	
330023	*	39100	35644	
330049		39100	35644	
330067	*	39100	35644	
330106		35004	-----	1.6920
330126		39100	35644	
330135		39100	35644	
330205		39100	35644	
330209		39100	35004	
330264		39100	35004	
340002		11700	16740	
350002		13900	22020	
350003		35	22020	
350006		35	22020	
350010		35	22020	
350014		35	22020	
350015		13900	22020	
350017		35	22020	
350019	*	24220	22020	
350030		35	22020	
350061		35	22020	
380090		38	-----	1.3419
390001		42540	10900	
390003		39	10900	
390045		39	10900	
390054		42540	29540	
390072		39	10900	
390095		42540	10900	
390109		42540	10900	
390119		42540	10900	
390137		42540	10900	
390169		42540	10900	

Provider Number	Note	GEO CBSA	Wage Index CBSA Section 508 reclassification	Own Wage Index
390185		42540	29540	
390192		42540	10900	
390237		42540	10900	
390270		42540	29540	
430005		43	39660	
430008	*	43	43620	
430013	*	43	43620	
430015		43	43620	
430048		43	43620	
430060		43	43620	
430064		43	43620	
450072		26420	26420	
450591		26420	26420	
470003		15540	14484	
490001		49	31340	
530008	*	53	16220	
530010	*	53	16220	
530015		53	-----	1.1730

*Special Exception Hospital

TABLE 9C.--HOSPITALS REDESIGNATED AS RURAL UNDER SECTION 1886(d)(8)(E) OF THE ACT--FY 2009

Provider No.	Geographic CBSA	Redesignated Rural Area
040118	27860	04
050192	23420	05
050528	32900	05
050618	40140	05
070004	07	07
070036	25540	07
100048	37860	10
100118	37380	10
100134	27260	10
140167	14	14
170137	29940	17
180038	36980	18
220051	38340	22
230078	35660	23
250017	25	25
260006	41140	26
260047	27620	26
260195	44180	26
330235	33	33
330268	10580	33
360125	36	36
370054	36420	37
380040	13460	38
390130	27780	39
390183	39	39
390233	49620	39
440135	34980	44
450052	45	45
450078	10180	45
450243	10180	45
450348	45	45
490116	13980	49
500148	48300	50

TABLE 10.— GEOMETRIC MEAN PLUS THE LESSER OF .75 OF THE NATIONAL ADJUSTED OPERATING STANDARDIZED PAYMENT AMOUNT (INCREASED TO REFLECT THE DIFFERENCE BETWEEN COSTS AND CHARGES) OR .75 OF ONE STANDARD DEVIATION OF MEAN CHARGES BY MEDICARE SEVERITYDIAGNOSIS-RELATED GROUP (MS-DRG)— SEPTEMBER 2008[1]

MS-DRG	Number of Cases	Threshold
1	667	$350,180
2	295	$202,093
3	23,629	$259,278
4	21,674	$156,669
5	649	$173,218
6	232	$96,677
7	364	$165,959
8	498	$96,583
9	1,369	$104,758
10	168	$77,310
11	1,276	$77,665
12	1,928	$55,719
13	1,287	$39,741
20	901	$149,423
21	535	$116,374
22	215	$80,552
23	3,780	$88,628
24	2,118	$62,911
25	8,805	$82,535
26	11,888	$56,677
27	13,830	$44,660
28	1,686	$80,534
29	3,110	$50,451
30	3,463	$32,823
31	1,034	$67,764
32	2,816	$39,045
33	3,661	$31,254
34	769	$60,933
35	2,266	$44,757
36	7,016	$38,814
37	4,889	$55,172
38	14,285	$35,678
39	52,451	$25,826
40	4,812	$62,264
41	7,674	$42,119
42	4,917	$36,280
52	1,181	$32,502
53	594	$22,362
54	5,307	$32,133
55	16,514	$27,048
56	8,344	$30,026
57	47,831	$19,669
58	754	$29,933
59	2,797	$22,922
60	4,151	$17,311
61	1,605	$55,877
62	2,490	$44,524
63	1,349	$38,880
64	56,395	$35,740
65	106,265	$28,376
66	90,498	$21,585
67	1,421	$31,194
68	11,560	$23,180
69	103,051	$18,910
70	7,412	$35,107
71	9,615	$27,676
72	5,809	$20,063
73	9,327	$28,586
74	31,936	$21,420
75	1,260	$35,960
76	887	$23,229
77	1,227	$34,493
78	1,417	$25,711
79	941	$19,425
80	1,899	$26,414
81	7,255	$17,878
82	1,781	$36,800
83	2,101	$30,301
84	2,820	$22,410

MS-DRG	Number of Cases	Threshold
85	5,961	$37,157
86	11,620	$28,122
87	13,170	$19,810
88	727	$32,069
89	2,796	$23,587
90	3,162	$17,963
91	7,715	$30,853
92	16,461	$22,327
93	16,334	$17,165
94	1,486	$57,482
95	1,050	$44,370
96	768	$37,860
97	1,204	$56,735
98	1,016	$38,093
99	661	$30,798
100	17,215	$30,431
101	57,866	$19,168
102	1,105	$24,379
103	14,026	$16,829
113	537	$33,847
114	564	$20,681
115	1,066	$26,383
116	568	$26,325
117	1,148	$16,432
121	550	$22,399
122	635	$14,210
123	2,815	$18,883
124	763	$25,301
125	4,740	$16,936
129	1,374	$41,005
130	1,090	$29,785
131	950	$39,895
132	905	$28,277
133	2,016	$32,925
134	3,423	$21,230
135	353	$37,038
136	477	$24,077
137	786	$29,179
138	900	$18,695
139	1,513	$20,967
146	686	$36,939
147	1,386	$27,470
148	878	$20,950
149	39,317	$16,001
150	963	$25,702
151	6,919	$13,753
152	1,751	$21,755
153	11,646	$15,269
154	1,923	$29,021
155	4,528	$21,889
156	4,915	$16,159
157	1,058	$29,502
158	3,279	$21,478
159	2,418	$15,121
163	13,773	$83,453
164	18,059	$51,132
165	13,944	$40,666
166	20,767	$60,975
167	20,722	$42,341
168	5,545	$32,474
175	12,812	$34,977
176	41,870	$26,284
177	64,396	$38,310
178	71,682	$31,941
179	26,451	$24,926
180	22,654	$35,127
181	30,679	$28,820
182	5,537	$22,800
183	1,894	$32,807
184	4,459	$23,434
185	2,587	$16,644
186	9,341	$33,312
187	10,149	$27,248
188	5,099	$20,513
189	114,170	$30,815
190	59,538	$29,133
191	119,558	$24,050
192	187,411	$18,035
193	88,534	$31,042
194	257,304	$24,721
195	135,537	$18,061
196	5,446	$33,067

MS-DRG	Number of Cases	Threshold
197	6,882	$27,136
198	4,702	$20,751
199	3,253	$35,202
200	8,526	$24,919
201	3,521	$17,736
202	29,714	$20,165
203	37,593	$14,854
204	26,050	$17,531
205	5,944	$27,683
206	21,886	$18,719
207	40,028	$87,175
208	77,522	$43,696
215	144	$172,583
216	8,722	$168,673
217	7,298	$124,613
218	2,583	$104,303
219	10,629	$136,750
220	14,050	$99,506
221	7,109	$87,590
222	2,797	$156,454
223	5,142	$119,834
224	1,927	$144,859
225	5,115	$113,586
226	7,117	$118,889
227	43,059	$93,598
228	3,006	$132,494
229	3,626	$95,608
230	1,577	$80,872
231	1,462	$149,256
232	1,538	$114,601
233	16,458	$125,773
234	34,758	$93,533
235	9,731	$99,887
236	30,389	$73,954
237	22,666	$88,563
238	42,729	$58,010
239	13,454	$62,944
240	11,788	$43,394
241	2,706	$32,377
242	17,685	$66,930
243	36,426	$53,046
244	63,236	$44,651
245	3,969	$73,705
246	29,110	$67,213
247	190,568	$48,929
248	13,985	$60,897
249	70,703	$44,198
250	6,841	$59,821
251	42,071	$42,022
252	46,038	$51,859
253	45,347	$46,599
254	54,071	$37,522
255	2,555	$40,856
256	3,484	$31,831
257	715	$23,541
258	698	$53,392
259	7,345	$38,215
260	1,565	$56,336
261	3,542	$31,668
262	3,551	$25,583
263	664	$30,769
264	28,519	$42,144
265	1,985	$42,846
280	64,366	$37,621
281	54,433	$29,749
282	55,150	$22,606
283	15,083	$32,928
284	4,182	$24,080
285	2,835	$16,166
286	23,916	$42,755
287	159,829	$29,565
288	2,994	$50,522
289	1,368	$37,460
290	489	$31,380
291	189,708	$30,643
292	206,974	$23,936
293	199,315	$17,466
294	1,430	$21,913
295	1,360	$14,113
296	1,943	$29,033
297	806	$17,790
298	610	$12,320

MS-DRG	Number of Cases	Threshold
299	17,994	$29,192
300	45,146	$21,421
301	37,566	$15,533
302	7,679	$24,678
303	71,538	$14,889
304	2,117	$25,900
305	35,675	$15,250
306	1,528	$29,235
307	6,419	$18,542
308	36,157	$28,566
309	80,283	$20,644
310	160,728	$14,811
311	21,534	$13,249
312	168,023	$18,153
313	214,895	$14,816
314	62,318	$32,325
315	30,368	$24,124
316	18,297	$16,552
326	11,381	$90,558
327	10,584	$52,480
328	8,959	$34,200
329	48,723	$83,780
330	64,446	$49,900
331	28,654	$37,399
332	1,844	$76,573
333	5,991	$48,651
334	3,788	$36,460
335	7,271	$70,910
336	12,611	$45,919
337	8,691	$34,642
338	1,525	$60,307
339	3,201	$42,350
340	3,630	$31,499
341	895	$45,194
342	2,578	$33,925
343	7,118	$24,131
344	941	$54,685
345	2,959	$36,220
346	2,787	$28,028
347	1,646	$40,506
348	4,217	$30,271
349	5,234	$19,231
350	1,779	$42,951
351	4,336	$30,965
352	8,274	$20,476
353	3,207	$47,326
354	8,523	$33,498
355	15,542	$23,860
356	8,439	$61,925
357	7,904	$43,023
358	2,509	$32,769
368	3,613	$34,231
369	5,316	$26,846
370	3,585	$20,025
371	24,650	$34,392
372	27,382	$28,910
373	15,460	$20,461
374	9,200	$35,953
375	19,226	$28,484
376	4,367	$22,813
377	52,154	$32,545
378	111,612	$24,182
379	93,372	$18,627
380	3,056	$35,535
381	5,361	$27,811
382	4,539	$21,033
383	1,244	$29,631
384	8,200	$21,181
385	2,020	$35,128
386	7,210	$26,911
387	5,115	$20,226
388	18,761	$31,277
389	46,428	$23,202
390	47,113	$16,365
391	44,855	$26,208
392	285,913	$17,724
393	23,543	$31,065
394	46,428	$23,924
395	25,196	$17,461
405	4,005	$86,487
406	5,350	$52,509
407	2,137	$39,512

MS-DRG	Number of Cases	Threshold
408	1,563	$71,807
409	1,749	$50,723
410	609	$37,203
411	962	$69,368
412	974	$51,237
413	767	$40,098
414	5,317	$62,934
415	6,215	$43,484
416	5,419	$32,786
417	16,630	$49,726
418	27,447	$39,396
419	36,368	$29,729
420	777	$66,604
421	1,063	$39,571
422	336	$31,203
423	1,551	$72,349
424	903	$47,708
425	127	$33,165
432	15,381	$33,222
433	9,856	$23,879
434	914	$16,997
435	12,292	$35,049
436	13,359	$28,607
437	3,958	$25,554
438	14,238	$33,752
439	24,699	$26,831
440	26,114	$18,738
441	13,517	$31,699
442	14,410	$24,001
443	6,684	$17,768
444	13,090	$33,254
445	17,029	$27,408
446	16,238	$19,788
453	953	$165,244
454	1,801	$120,763
455	2,018	$93,430
456	952	$143,760
457	2,440	$98,534
458	1,630	$82,489
459	3,559	$97,711
460	52,947	$66,676

MS-DRG	Number of Cases	Threshold
461	1,031	$82,145
462	13,331	$63,190
463	5,089	$60,936
464	5,905	$43,661
465	2,444	$31,902
466	4,120	$74,571
467	14,449	$58,010
468	21,379	$49,753
469	30,894	$59,483
470	410,820	$44,647
471	2,324	$78,005
472	7,094	$52,457
473	23,420	$43,166
474	2,960	$52,163
475	3,324	$37,342
476	1,614	$25,568
477	2,617	$58,538
478	8,655	$45,195
479	11,570	$36,074
480	27,053	$53,738
481	72,935	$40,458
482	48,828	$34,547
483	7,165	$47,815
484	18,095	$40,775
485	1,195	$60,153
486	2,213	$45,006
487	1,324	$36,265
488	2,533	$35,692
489	5,870	$27,886
490	23,297	$37,496
491	53,523	$23,730
492	5,306	$51,541
493	17,169	$39,009
494	29,667	$29,914
495	1,994	$52,688
496	5,634	$37,247
497	6,770	$28,136
498	1,176	$38,158
499	1,126	$22,343
500	1,525	$47,427
501	3,933	$32,948

MS-DRG	Number of Cases	Threshold
502	6,548	$23,462
503	847	$42,687
504	2,197	$32,797
505	3,065	$24,230
506	825	$25,593
507	848	$37,287
508	2,547	$27,727
509	635	$28,171
510	989	$40,984
511	3,994	$33,039
512	11,161	$23,793
513	1,071	$30,430
514	1,030	$20,109
515	3,866	$54,223
516	11,406	$39,787
517	17,757	$32,711
533	831	$27,843
534	3,447	$16,216
535	7,096	$27,940
536	34,111	$15,447
537	677	$21,470
538	1,067	$13,732
539	3,493	$35,332
540	4,089	$28,835
541	1,672	$21,465
542	5,784	$34,971
543	17,178	$26,885
544	10,911	$18,020
545	4,144	$36,501
546	5,639	$26,266
547	4,610	$17,885
548	594	$34,088
549	1,133	$26,895
550	871	$18,783
551	10,168	$31,073
552	86,270	$18,686
553	3,121	$25,627
554	19,458	$15,029
555	2,049	$23,834
556	18,897	$14,400
557	3,700	$30,156
558	15,306	$19,410
559	1,828	$30,466
560	4,376	$21,222
561	7,200	$13,607
562	5,535	$28,334
563	36,837	$15,516
564	1,693	$28,727
565	3,376	$21,269
566	2,676	$15,978
573	5,538	$45,892
574	11,245	$34,505
575	5,515	$25,504
576	557	$51,448
577	2,253	$33,094
578	3,108	$24,189
579	3,548	$45,298
580	10,875	$31,317
581	12,342	$22,349
582	5,400	$24,302
583	8,891	$19,157
584	679	$31,633
585	1,520	$20,767
592	4,245	$31,306
593	12,494	$23,837
594	2,821	$17,108
595	1,126	$31,587
596	5,387	$19,377
597	465	$31,184
598	1,427	$25,596
599	325	$17,927
600	695	$22,518
601	903	$15,558
602	22,431	$28,572
603	132,472	$18,283
604	2,708	$27,046
605	22,539	$16,438
606	1,366	$25,874
607	7,294	$15,116
614	1,474	$47,889
615	1,567	$34,751
616	1,103	$66,061

MS-DRG	Number of Cases	Threshold
617	6,828	$38,857
618	265	$29,608
619	714	$56,192
620	2,232	$41,624
621	7,982	$34,811
622	1,122	$43,483
623	3,104	$34,563
624	389	$24,658
625	1,286	$42,104
626	2,580	$28,891
627	14,197	$19,237
628	3,397	$53,876
629	4,228	$42,523
630	549	$33,352
637	17,373	$28,248
638	43,379	$19,241
639	39,037	$13,520
640	61,619	$25,190
641	204,124	$16,426
642	1,534	$23,981
643	5,234	$32,173
644	11,958	$25,374
645	8,323	$17,940
652	10,324	$61,303
653	1,712	$89,574
654	3,508	$56,372
655	1,658	$43,108
656	3,962	$58,920
657	7,513	$41,361
658	8,380	$33,615
659	4,717	$53,904
660	7,685	$39,064
661	4,322	$31,893
662	958	$45,925
663	2,083	$32,065
664	4,439	$24,783
665	664	$47,491
666	2,122	$32,921
667	3,674	$20,129
668	3,876	$42,319
669	12,899	$30,219
670	11,840	$19,282
671	817	$31,313
672	951	$19,944
673	12,710	$45,362
674	11,850	$42,044
675	7,900	$34,182
682	83,160	$31,462
683	133,885	$26,722
684	45,575	$17,784
685	2,376	$19,695
686	1,618	$32,052
687	3,307	$26,451
688	1,097	$18,106
689	56,789	$27,214
690	201,012	$18,078
691	828	$34,076
692	500	$26,870
693	2,466	$28,882
694	18,323	$17,969
695	989	$25,997
696	10,715	$15,089
697	604	$17,446
698	23,635	$29,629
699	24,530	$23,370
700	12,472	$16,830
707	6,072	$37,356
708	18,339	$30,360
709	768	$35,665
710	1,863	$29,796
711	799	$37,743
712	715	$20,245
713	10,370	$26,947
714	29,251	$15,540
715	538	$36,216
716	1,284	$29,568
717	713	$34,352
718	597	$19,177

MS-DRG	Number of Cases	Threshold
722	767	$31,084
723	1,992	$24,859
724	597	$15,489
725	773	$24,566
726	3,774	$16,308
727	1,310	$28,050
728	6,261	$17,107
729	595	$25,615
730	473	$14,674
734	1,369	$44,363
735	1,142	$28,263
736	860	$73,340
737	3,327	$41,798
738	874	$28,855
739	1,023	$53,304
740	4,380	$34,588
741	6,078	$24,751
742	11,107	$32,162
743	32,872	$21,188
744	1,534	$30,950
745	1,711	$20,171
746	2,668	$30,237
747	10,537	$21,197
748	20,134	$20,542
749	1,000	$45,276
750	441	$24,653
754	995	$33,686
755	2,985	$26,048
756	694	$16,146
757	1,410	$33,007
758	1,629	$26,491
759	1,259	$19,008
760	1,724	$19,510
761	1,800	$13,223
765	2,842	$20,303
766	2,769	$13,803
767	139	$18,450
769	100	$28,970
770	207	$16,088
774	1,550	$12,252
775	5,900	$8,742
776	520	$15,037
777	216	$20,199
778	478	$8,900
779	118	$11,225
780	41	$3,900
781	3,093	$13,141
782	176	$8,662
799	572	$82,709
800	717	$50,767
801	563	$37,526
802	776	$54,160
803	1,078	$36,255
804	1,002	$27,103
808	6,157	$37,269
809	13,007	$27,688
810	2,827	$22,834
811	21,680	$27,026
812	91,413	$18,354
813	14,341	$27,301
814	1,590	$30,617
815	3,364	$25,792
816	2,179	$18,357
820	1,315	$89,932
821	2,508	$43,960
822	1,905	$30,704
823	2,206	$69,562
824	3,008	$44,485
825	1,779	$30,850
826	534	$76,512
827	1,271	$44,212
828	809	$32,213
829	1,182	$48,072
830	520	$28,455
834	4,061	$58,488
835	2,739	$37,442
836	1,641	$25,771
837	1,058	$97,074

MS-DRG	Number of Cases	Threshold
838	1,334	$47,519
839	1,481	$30,607
840	9,783	$43,409
841	10,152	$32,386
842	5,394	$25,598
843	1,382	$34,759
844	2,442	$27,816
845	819	$21,578
846	2,137	$39,109
847	24,075	$27,023
848	1,732	$23,243
849	1,486	$29,330
853	35,254	$81,048
854	6,738	$52,759
855	470	$38,842
856	5,959	$65,317
857	9,718	$37,702
858	3,302	$30,476
862	8,047	$34,491
863	21,755	$22,069
864	19,252	$20,762
865	1,722	$29,432
866	8,273	$17,147
867	5,139	$39,032
868	2,683	$25,599
869	1,158	$18,458
870	21,514	$94,870
871	218,803	$35,486
872	91,942	$27,025
876	867	$42,540
880	9,385	$15,128
881	4,721	$11,981
882	1,584	$12,543
883	767	$17,955
884	19,323	$19,171
885	82,423	$15,186
886	412	$13,839
887	404	$16,619
894	4,835	$7,585
895	10,358	$12,773
896	5,634	$27,120
897	38,721	$13,074
901	931	$54,894
902	2,056	$33,415
903	1,521	$23,581
904	1,056	$43,276
905	818	$26,134
906	726	$24,557
907	8,585	$56,219
908	8,449	$37,064
909	5,535	$27,913
913	823	$27,438
914	6,752	$16,341
915	1,092	$26,264
916	5,578	$10,516
917	16,048	$29,902
918	36,232	$14,342
919	11,218	$30,542
920	14,166	$22,290
921	9,557	$14,892
922	1,075	$28,476
923	4,025	$15,386
927	214	$181,814
928	827	$64,807
929	441	$37,283
933	147	$31,885
934	666	$24,850
935	2,237	$23,094
939	682	$46,373
940	1,340	$34,118
941	1,749	$26,887
945	6,776	$20,305
946	4,409	$15,735
947	9,852	$24,763
948	48,444	$15,898
949	701	$18,398
950	430	$12,730
951	973	$15,440

MS-DRG	Number of Cases	Threshold
955	461	$88,237
956	4,085	$57,849
957	1,398	$101,376
958	1,219	$66,932
959	307	$48,213
963	1,637	$50,378
964	2,694	$34,630
965	1,104	$25,287
969	648	$78,331
970	139	$46,240
974	6,013	$42,166
975	4,739	$29,791
976	2,674	$22,442
977	4,670	$25,218
981	25,712	$78,895
982	18,528	$55,184
983	6,181	$40,297
984	678	$59,474
985	916	$42,965
986	737	$29,743
987	8,334	$55,911
988	11,755	$38,174
989	5,900	$27,663
999	26	$15,336

[1]Cases taken from the FY 2007 MedPAR file; MS-DRGs are from GROUPER Version 26.0.

[FR Doc. E8–23083 Filed 9–29–08; 11:15 am]

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To designate the facility of the United States Postal Service located at 301 Commerce Street in Commerce, Oklahoma, as the ''Mickey Mantle Post Office Building''. (Sept. 30, 2008; 122 Stat. 3720)

S. 2339/P.L. 110–332

To designate the Department of Veterans Affairs clinic in Alpena, Michigan, as the ''Lieutenant Colonel Clement C. Van Wagoner Department of Veterans Affairs Clinic''. (Sept. 30, 2008; 122 Stat. 3721)

S. 3241/P.L. 110–333

To designate the facility of the United States Postal Service located at 1717 Orange Avenue in Fort Pierce, Florida, as the ''CeeCee Ross Lyles Post Office Building''. (Sept. 30, 2008; 122 Stat. 3722)

S. 3009/P.L. 110–334

To designate the Federal Bureau of Investigation building under construction in Omaha, Nebraska, as the ''J. James Exon Federal Bureau of Investigation Building''. (Oct. 1, 2008; 122 Stat. 3723)

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