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WHEN: Tuesday, June 9, 2009
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Conference Room, Suite 700
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Washington, DC 20002

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Contents

Federal Register

Vol. 74, No. 105

Wednesday, June 3, 2009

Agricultural Marketing Service
PROPOSED RULES
National Organic Program:
Proposed Amendments to the National List of Allowed and Prohibited Substances (Crops and Processing), 26591–26596

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service

Animal and Plant Health Inspection Service
RULES
Importation of Eggplant From Israel, 26511–26514
NOTICES
Environmental Assessment; Availability, etc.:
ArborGen, LLC, 26648–26649

Bonneville Power Administration
NOTICES
Environmental Impact Statements; Intent:
Big Eddy – Knight Transmission Project, 26679–26680

Centers for Disease Control and Prevention
NOTICES
Draft Guideline for Prevention of Catheter-Associated Urinary Tract Infections 2008, 26704
Meetings:
National Center for Environmental Health/Agency for Toxic Substances and Disease Registry, 26713

Centers for Medicare & Medicaid Services
RULES
Medicare Programs:
Revisions to FY 2009 Medicare Severity-Long-term Care Diagnosis-Related Group (MS–LTC–DRG) Weights, 26546–26569
PROPOSED RULES
Medicare Programs:
Proposed Rate Year (RY) 2010 Medicare Severity-Long-Term Care Diagnosis Related Group, etc., 26600–26635

Commerce Department
See Foreign–Trade Zones Board
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26649–26650

Defense Department
PROPOSED RULES
Federal Acquisition Regulations:
FAR Case 2008019, Authentic Information Technology Products, 26646–26647
NOTICES
Intent to Grant an Exclusive License:
University of Maryland, 26654
Meetings:
U.S. Nuclear Command and Control System Comprehensive Review Advisory Committee, 26654

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26654–26655
Applications:
Technology and Media Services for Individuals with Disabilities—National Center on Accessible Instructional Materials; Fiscal Year 2009 Funding Availability, 26656–26661
Technology and Media Services for Individuals with Disabilities—National Instructional Materials Accessibility Standard; New Awards for Fiscal Year (FY) 2009, 26661–26665

Election Assistance Commission
NOTICES
Proposed Guidance on Voluntary Voting System Guidelines, 26665–26667

Energy Department
See Bonneville Power Administration
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
See Western Area Power Administration
PROPOSED RULES
Energy Conservation Program for Certain Industrial Equipment:
Energy Conservation Standards for Commercial Heating, Air-Conditioning, and Water-Heating Equipment, 26596–26597
NOTICES
Applications to Export Electric Energy:
Endure Energy, LLC, 26668
J.P. Morgan Commodities Canada Corp., 26667–26668
Scotia Capital Energy Corp., 26668–26669

Energy Efficiency and Renewable Energy Office
NOTICES
Energy Conservation Program for Consumer Products:
Representative Average Unit Costs of Energy, 26675–26677

Environmental Protection Agency
RULES
Exemptions from the Requirement of a Tolerance:
Technical Amendments, 26527–26536
Pesticide Tolerances:
Triflumizole, 26536–26543
Revisions to the California State Implementation Plan:
San Diego Air Pollution Control District, 26525–26527
Tolerance Exemptions:
Aspergillus flavus AF36 on Pistachio, 26543–26546
PROPOSED RULES
Revisions to the California State Implementation Plan:
San Diego Air Pollution Control District, 26600
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26686–26690
Amendments to Reregistration Eligibility Decisions:
Chloropicrin, Dazomet, Metam Sodium/Potassium, and Methyl Bromide, 26690–26692
L–Lactic Acid Registration Review Final Decision; Availability, 26692–26693

Meetings:
Scientific Advisory Panel, 26693–26695
Nicotine; Product Cancellation Order, 26695–26696
Pesticide Registrations:
Iodine and Iodophors Reregistration, 26696–26697

Farm Credit System Insurance Corporation
NOTICES
Meetings:
Farm Credit System Insurance Corporation Board, 26697

Federal Deposit Insurance Corporation
RULES
Amendment of the Temporary Liquidity Guarantee Program to Extend the Debt Guarantee Program, etc., 26521–26525
Interest Rate Restrictions on Insured Depository Institutions That Are Not Well Capitalized, 26516–26521
NOTICES
Meetings; Sunshine Act, 26697–26698

Federal Emergency Management Agency
RULES
Changes in Flood Elevation Determinations, 26572–26580
Suspension of Community Eligibility, 26569–26572
PROPOSED RULES
Proposed Flood Elevation Determinations, 26636–26646
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26722–26724
Emergency Declarations:
Minnesota, 26724–26725
Major Disaster Declarations:
Alabama, 26726
Georgia, 26726
Minnesota, 26725
Tennessee, 26725
West Virginia, 26725

Federal Energy Regulatory Commission
NOTICES
Applications:
CRD Hydroelectric, LLC, 26670–26671
Northwest Pipeline GP, 26669–26670
Blanket Authorizations:
Tennessee Gas Pipeline Co., 26671
Complaints:
Shell Energy North America (US), L.P., 26675
Effectiveness of Exempt Wholesale Generator Status:
Hay Canyon Wind LLC et al., 26675
Environmental Impact Statements; Availability, etc.:
Calais LNG Project Company, LLC, 26677–26679
Initial Market-Based Rate Filing:
Hoosier Wind, LLC, 26680–26681
Lafarge Midwest, Inc., 26681
Meetings:
Southwest Power Pool Board of Directors, 26681–26682

Federal Highway Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26762

Federal Maritime Commission
NOTICES
Ocean Transportation Intermediary Licenses; Applicants, 26698–26699
Ocean Transportation Intermediary Licenses; Revocations, 26699

Federal Reserve System
RULES
Availability of Funds and Collection of Checks, 26515–26516
NOTICES
Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies, 26698
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 26698

Food and Drug Administration
NOTICES
Draft Guidance for Industry and Researchers on the Radioactive Drug Research Committee:
Human Research Without an Investigational New Drug Application; Availability, 26703
Meetings:
Food and Drug Administration Transparency Task Force, 26712–26713

Foreign–Trade Zones Board
NOTICES
Approval of Manufacturing Authority Within Foreign–Trade Zone 38, Spartanburg County, SC:
ZF Lemforder Corp., 26650–26651
Foreign–Trade Zone 119:
Application for Expansion—
Minneapolis–St. Paul, MN, 26652–26653
Grant of Authority for Subzone Status:
Adidas Sales, Inc., Spartanburg, SC, 26653

Forest Service
NOTICES
Environmental Impact Statements; Intent:
Kootenai National Forest, Lincoln County, MT, 26649

General Services Administration
PROPOSED RULES
Federal Acquisition Regulations:
FAR Case 2008019, Authentic Information Technology Products, 26646–26647
NOTICES
Meetings:
Multiple Award Schedule Advisory Panel, 26699–26700
Privacy Act; Systems of Records, 26700–26702

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

Homeland Security Department
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services
RULES
Extending Period of Optional Practical Training by 17 Months for F–1 Nonimmigrant Students, etc.:
Correction, 26514–26515
NOTICES
Privacy Act; Computer Matching Program, 26715–26717, 26719–26721
Privacy Act; Computer Matching Program, 26717–26719
United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program:
Collection of Alien Biometric Data upon Exit from the United States at Air Ports of Departure, 26721–26722

Interior Department
See Land Management Bureau
See National Park Service
See Reclamation Bureau

Internal Revenue Service
PROPOSED RULES
Section 2036–Graduated Retained Interests:
Correction, 26597–26598

International Trade Commission
NOTICES
Investigations:
Prestressed Concrete Steel Wire Strand from China, 26731–26732
Tunable Laser Chips, Assemblies, and Products Containing Same, 26732

Justice Department
PROPOSED RULES
Privacy Act; Systems of Records, 26598–26600
NOTICES
Consent Decrees:
United States of America v. Georgia Pacific LLC, 26732–26733
Privacy Act; Systems of Records, 26733–26736

Labor Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26736–26737

Land Management Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26726–26727
Meetings:
Resource Advisory Council to the Boise District, 26731

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulations:
FAR Case 2008019, Authentic Information Technology Products, 26646–26647

National Highway Traffic Safety Administration
NOTICES
Petition for Decision that Nonconforming 2006 BMW M3 Passenger Cars Manufactured Before September 1, 2006 are Eligible for Importation, 26762–26764
Petition for Decision that Nonconforming 2006 Porsche Cayenne Multipurpose Passenger Vehicles Manufactured Prior to September 1, 2006 are Eligible for Importation, 26764–26765

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26702
Government-Owned Inventions; Availability for Licensing, 26704–26710
Meetings:
Board of Scientific Counselors of the NIH Clinical Center, 26714
National Cancer Institute, 26711–26712, 26714
National Institute of Biomedical Imaging and Bioengineering, 26714
National Institute of Environmental Health Sciences, 26711
National Institute of General Medical Sciences, 26710–26711
Prospective Grant of Exclusive Licenses:
N–Acetyl–Mannosamine; Hyposialylation, 26714–26715

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Northeastern United States:
Atlantic Sea Scallop Fishery; Elephant Trunk Scallop Access Area to General Category Scallop Vessels, Closure, 26589–26590
Taking and Importing Marine Mammals:
Taking Marine Mammals Incidental to Missile Launch Activities, San Nicolas Island, CA, 26580–26589
NOTICES
Endangered and Threatened Species:
Take of Anadromous Fish, 26651–26652
Meetings:
Hydrographic Services Review Panel, 26653–26654

National Park Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Prisoners Harbor Coastal Wetland Restoration Project, Channel Islands National Park, CA, 26728–26730
Yosemite Institute Environmental Education Campus, Yosemite National Park, Marisopa and Tuolumne Counties, CA, 26730–26731

Nuclear Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26737
Issuance and Availability of Regulatory Guide 3.52, Revision 2, 26737–26738
Meetings; Sunshine Act, 26738–26739
Proposed Agreements:
NRC and New Jersey, 26739–26743
Scoping Summaries:
Generic Environmental Impact Statement for License Renewal of Nuclear Plants, 26743

Postal Regulatory Commission
NOTICES
New Postal Product, 26744–26745

Postal Service
NOTICES
Meetings; Sunshine Act, 26745–26746

Reclamation Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26727–26728

Securities and Exchange Commission
NOTICES
Applications:
The Managers Funds, et al., 26746–26750
Meetings; Sunshine Act, 26750
Self-Regulatory Organizations; Proposed Rule Changes:
Nasdaq OMX PHLX, Inc, 26750–26761

State Department
NOTICES
Meetings:
Advisory Committee on Historical Diplomatic Documentation, 26761

Transportation Department
See Federal Highway Administration
See National Highway Traffic Safety Administration
NOTICES
Aviation Proceedings, Agreements Filed Week Ending May 23, 2009, 26761

Treasury Department
See Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26765

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 26723–26724

Veterans Affairs Department
NOTICES
Privacy Act; Systems of Records, 26766–26769

Western Area Power Administration
NOTICES
Call for 2015 Resource Pool Applications, 26671–26675
Pick–Sloan Missouri Basin Program—Eastern Division–Rate Order (No. WAPA–144), 26682–26686

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
319 26511
Proposed Rules:
205 26591

8 CFR
214 26514
274a 26514

10 CFR
Proposed Rules:
431 26596

12 CFR
229 26515
337 26516
370 26521

26 CFR
Proposed Rules:
20 26597

28 CFR
Proposed Rules:
16 26598

40 CFR
52 26525
180 (3 documents) 26527, 26536, 26543
Proposed Rules:
52 26600

42 CFR
412 26546
Proposed Rules:
412 26600

44 CFR
64 26569
65 (2 documents) 26572, 26577
Proposed Rules:
67 (2 documents) 26636, 26640

48 CFR
Proposed Rules:
2 26646
4 26646
12 26646
39 26646
52 26646

50 CFR
216 26580
648 26589

Rules and Regulations

Federal Register
Vol. 74, No. 105
Wednesday, June 3, 2009

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2007–0153]

RIN 0579–AC88

Importation of Eggplant From Israel

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation into the continental United States of commercial consignments of fresh eggplant from Israel. As a condition of entry, the eggplant must be grown under a systems approach that includes requirements for pest exclusion at the production site, fruit fly trapping inside and outside the production site, and pest-excluding packinghouse procedures. The eggplant must be accompanied by a phytosanitary certificate issued by the Israeli national plant protection organization with an additional declaration confirming that the eggplants have been produced in accordance with those requirements. This action will allow for the importation of commercial consignments of fresh eggplant from Israel into the United States while continuing to provide protection against the introduction of quarantine pests.

DATES: *Effective Date:* July 6, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–48, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

On November 12, 2008, we published in the **Federal Register** (73 FR 66807–66811, Docket No. APHIS–2007–0153) a proposal [1] to allow the importation into the continental United States of commercial consignments of fresh eggplant from Israel if they were produced in accordance with a systems approach. The proposed systems approach included the following measures:

- Growing the eggplant in pest-exclusionary structures;
- Trapping both inside and outside the pest-exclusionary structures for *Ceratitis capitata* (Mediterranean fruit fly, or Medfly);
- Packinghouse procedures designed to exclude quarantine pests.

In addition, we proposed to require all consignments of eggplant from Israel to be accompanied by a phytosanitary certificate with a declaration stating that the eggplant had been produced in accordance with the proposed requirements.

We solicited comments concerning our proposal for 60 days, ending January 12, 2009. We received three comments by that date. They were from private citizens and the Israeli national plant protection organization (NPPO). They are discussed below.

One commenter expressed concern that the quarantine pests associated with eggplant from Israel may be a serious health threat to Americans.

The commenter provided no specific information regarding the health risk posed by these pests. We have determined that these pests pose no human health risk.

We proposed to require that any vents or openings in the pest-exclusionary structures (other than the double self-closing doors) be covered with 1.6 mm or smaller screening in order to prevent the entry of pests into the pest-exclusionary structure. One commenter expressed concern that one quarantine pest identified in the pest risk analysis (PRA) prepared for the proposed rule, *Scirtothrips dorsalis,* may be small enough to pass through the 1.6 mm screening and stated that the structures should completely exclude *S. dorsalis.* This commenter also questioned whether inspection would be an effective mitigation for *S. dorsalis,* noting its small size.

As noted in the proposed rule, the thrips species is at least partially discouraged by the physical barrier of the 1.6 mm mesh. Also, thrips are external feeders and would most likely be detected during inspection of the pest-exclusionary structures. Under the final rule, pest-exclusionary structures will be inspected monthly for the six quarantine pests beginning 2 months before harvest and continuing for the duration of the harvest, and each consignment of eggplant will be inspected for all quarantine pests, including *S. dorsalis,* by the Israeli NPPO. These inspections are completed by trained inspectors who are looking for these quarantine pests specifically. Based on our experience inspecting for *S. dorsalis* and other external feeders, we have determined that inspection will be an effective mitigation against *S. dorsalis* in eggplant from Israel.

One commenter stated that the proposed rule incorporated preventative measures to prevent pest infestation, but did not include very many secondary checks for pests.

As noted earlier, the systems approach includes inspections to verify freedom from quarantine pests at multiple points during the production process. These inspections begin 2 months before harvest and continue throughout the entire shipping process.

We proposed to require trapping for Medfly in the agricultural region along the Arava Highway 90 and in the residential area of Paran. One commenter stated that trapping for Medfly is carried out in all agricultural regions in the Arava as well as in all the residential areas, including Paran.

This trapping is consistent with our proposed requirements, and an expansion of the trapping area will not affect the trapping requirements that we included in the proposed rule.

One commenter addressed supporting documents provided with the proposal.

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0153.*

For example, the risk management document (RMD) discussed the use of McPhail traps for trapping Medfly. The commenter stated that Israel currently uses Tephri traps.

While the RMD specifically referred to McPhail traps, we proposed to allow any APHIS-approved traps to be used in the trapping for Medfly. The Tephri trap, which is a modified McPhail trap, is approved for use by APHIS under this final rule.

The RMD referred to ''fruit fly material'' not being permitted within 50 meters of the entry door of the packinghouse. This commenter requested further clarification on the term ''fruit fly material.''

This refers to any organic material that could become host material for the fruit fly. The proposed rule correctly referred to ''fruit fly host material.'' The omission of the word ''host'' in the RMD was a typographical error.

The PRA referred to Israel using Malathion bait to control fruit fly populations. The commenter stated that the Israeli NPPO currently uses a sterile insect treatment program.

This program is complementary to the Malathion bait spray. No changes to the proposed rule are necessary in response to this comment.

One commenter stated that it would take decades for Israeli eggplant growers to make a profit under the proposed regulations and that the benefit to Israeli growers is small compared to the risk the United States is taking on by importing eggplant.

In accordance with the Plant Protection Act (7 U.S.C. 7701 *et seq.*), we base our decisions to allow the importation of fruits and vegetables on whether the risk associated with their importation can be successfully mitigated, not on economic issues such as whether exporting eggplant is a profit-making venture for farmers in Israel. The systems approach we proposed will effectively mitigate the pest risk associated with the importation of eggplant from Israel.

One commenter asked how importing eggplant from Israel would affect the U.S. relationship with current trading partners in eggplant (specifically China and India).

The economic analysis in the proposed rule reported that China and India are world leaders in the production of eggplant, and it appears that the commenter took that to mean that the United States imports eggplant from those countries, which is not the case. The importation into the United States of eggplant from China and India is not currently authorized. That being said, we do not expect that allowing the importation of eggplant from Israel will negatively affect our trading relationships with any of the countries that currently export eggplant to the United States, as Israel is a small exporter of eggplant. In 2006, Israel's exports of commercial shipments were valued at only $20,000. This value is only 0.05 percent of the value of U.S. eggplant imports in 2006.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Note: In our November 2008 proposed rule, we proposed to add the conditions governing the importation of eggplant from Israel as § 319.56–48. In this final rule, those conditions are added as § 319.56–49.

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the fruits and vegetables regulations to allow the importation into the continental United States of eggplant from Israel under certain conditions. As a condition of entry, the eggplant must be grown under a systems approach that will include requirements for pest exclusion at the production site, fruit fly trapping inside and outside the production site, and pest-excluding packinghouse procedures. The eggplant must be accompanied by a phytosanitary certificate issued by the Israeli NPPO with an additional declaration confirming that the eggplant have been produced in accordance with those requirements. This action will allow for the importation of commercial consignments of fresh eggplant from Israel into the United States while continuing to provide protection against the introduction of quarantine pests.

Eggplant, which is native to India and Pakistan, is a warm-season crop that is sensitive to cool temperatures. World production of eggplant is highly concentrated, with 83 percent of output by the top two producers, China (55 percent) and India (28 percent), and with the United States a distant 20th in production.

According to the 2002 Census of Agriculture, there were 50,000 farms in 47 States that may produce, among other vegetables, some eggplant, but only about 4 percent of the 50,000 farms reported harvesting eggplant. In all, about 7,000 acres are devoted to eggplant production in the United States, with 72 percent of eggplant production taking place in 11 counties in 4 States: California, Florida, Georgia, and New Jersey (table 1). In addition, 63 percent of the number of acres planted in eggplant in the United States are in these four States. Production at a much lower level takes place in other States including Hawaii, Michigan, and New York.

TABLE 1—2006 STATE-LEVEL PRODUCTION OF EGGPLANTS IN THE UNITED STATES

States/counties	Eggplant production (metric tons)	Number of acres planted with eggplant
California (Fresno and Riverside)	17,690.11	1,364
Florida (Palm Beach, Hillsborough, Dade)	15,875.74	1,174
Georgia (Colquitt, Echols, Lowndes)	14,870.75	1,100
New Jersey (Gloucester, Cumberland, Atlantic)	11,748.05	800
Sum of 4 States	* 60,184.65	** 4,438
United States	83,914.61	7,000

Source: United States Department of Agriculture (USDA), Economic Research Service (ERS), Vegetables and Melons Situation and Outlook Yearbook, December 2006; U.S. Census of Agriculture, 2002.

* (72% of production.)

** (63% of planted area.)

Despite a per-capita consumption rate of less than 1 pound, the United States is the leading importer of eggplant in the world, accounting for 20 percent of world eggplant import volume.[2] The next largest eggplant importers are France with 15 percent, Syria with 12 percent, Germany with 11 percent, and Canada with 9 percent of world eggplant import volume. These 5 countries account for 67 percent of world eggplant imports. The remaining 33 percent of world eggplant imports is divided among the rest of the world. Between 2004 and 2006, the United States imported on average $45 million worth of eggplant (table 2).

Most U.S. eggplant imports enter during the cooler months of the year. Florida is the only domestic shipper during the winter.[3]

TABLE 2—U.S. TRADE OF FRESH EGGPLANTS, 2004–2006

	U.S. imports	U.S. exports	Net imports
	(Value in thousand dollars)		.....
2004	$49,028	$8,148	$40,880
2005	$45,981	$8,735	$37,246
2006	$39,986	$8,943	$31,043
.....	(Quantities in metric tons)		.....
2004	49,768.4	9,669.1	40,099.3
2005	54,096.8	9,660.5	44,436.3
2006	49,065.0	9,626.2	39,438.8

Source: U.S. Department of Commerce, Bureau of Census, as reported by Global Trade Information Services. Note: Based on the Harmonized Schedules 070930.

Impact on Small Entities

U.S. entities that could be affected by this rule are domestic producers of fresh eggplant and wholesalers that import fresh eggplant. Businesses producing fresh eggplant are classified in the North American Industry Classification System (NAICS) within the category of other vegetable (except potato) and melon farming (NAICS 111219). The Small Business Administration's (SBA) small-entity standard for this category is $750,000 or less in annual receipts. While available data do not provide the number of U.S. eggplant-producing entities or information on the size distribution of U.S. eggplant-producing entities, it is reasonable to assume that the majority of the operations are small by SBA standards, based on the fact that the average vegetable farm is small.

Israel is a small exporter of eggplant. For example, in 2006 Israel's exports of commercial shipments of fresh eggplant were valued at only $20,000. This value is only 0.05 percent of the value of U.S. eggplant imports in 2006 (nearly $40 million). In other words, even if all of Israel's 2006 worldwide eggplant exports are diverted entirely to the United States, they will represent a negligible share of total U.S. imports and an even smaller share of the U.S. eggplant supply.

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

Executive Order 12988

This final rule allows eggplant to be imported into the United States from Israel. State and local laws and regulations regarding eggplant imported under this rule will be preempted while the fruit is in foreign commerce. Fresh vegetables are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0350.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizens' access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. A new § 319.56–49 is added to read as follows:

§ 319.56–49 Eggplant from Israel.

Eggplant (*Solanum melongena* L.) may be imported into the continental United States from Israel only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Ceratitis capitata, Eutetranychus orientalis, Helicoverpa armigera, Nipaecoccus*

[2] USDA, ERS, Vegetables and Melons Outlook/VGS–318/December 14, 2006 (pages 23–27).

[3] On average, during 2004–06, the winter season (January–March) accounted for 55 percent of U.S. eggplant imports; the spring season (April–June) accounted for 20 percent; the summer season (July–September) accounted for 5 percent; and, the fall season (October–December) accounted for 31 percent.

viridis, Scirtothrips dorsalis, and *Spodoptera littoralis.*

(a) *Approved pest-exclusionary structures.* The eggplant must be grown in pest-exclusionary structures in approved production sites in the Arava Valley of Israel by growers registered with the Israeli national plant protection organization (NPPO). Initial approval of the production sites must be completed jointly by the Israeli NPPO and APHIS.

(1) The pest-exclusionary structures must be equipped with double self-closing doors.

(2) Any vents or openings in the pest-exclusionary structures (other than the double self-closing doors) must be covered with 1.6 mm or smaller screening in order to prevent the entry of pests into the pest-exclusionary structure.

(3) The pest-exclusionary structures must be inspected periodically by the Israeli NPPO or its approved designee to ensure that sanitary procedures are employed to exclude plant pests and diseases and to verify that the screening is intact.

(4) The pest-exclusionary structures also must be inspected monthly for the quarantine pests listed in the introductory text of this section by the Israeli NPPO or its approved designee, beginning 2 months before harvest and continuing for the duration of the harvest. APHIS must be granted access to inspect or monitor the pest-exclusionary structures during this period as well. If, during these inspections, any quarantine pests listed in the introductory text of this section are found inside a pest-exclusionary structure, the Israeli NPPO will immediately prohibit that pest-exclusionary structure from exporting eggplant to the continental United States and notify APHIS of the action. The prohibition will remain in effect until the Israeli NPPO and APHIS agree that the risk has been mitigated.

(b) *Trapping for Medfly.* Trapping for Mediterranean fruit fly (Medfly, *Ceratitis capitata*) is required both inside and outside the pest-exclusionary structures. Trapping must begin 2 months before harvest and continue for the duration of the harvest.

(1) *Inside the pest-exclusionary structures.* APHIS-approved fruit fly traps with an approved protein bait must be placed inside the pest-exclusionary structures at a density of four traps per hectare, with a minimum of at least two traps per pest-exclusionary structure. The traps must be serviced at least once every 7 days. If a single Medfly is found in a trap inside a pest-exclusionary structure, the Israeli NPPO will immediately prohibit that pest-exclusionary structure from exporting eggplant to the continental United States and notify APHIS of the action. The prohibition will remain in effect until the Israeli NPPO and APHIS agree that the risk has been mitigated.

(2) *Outside the pest-exclusionary structures.* (i) No shade trees are permitted within 10 meters of the entry door of the pest-exclusionary structures, and no fruit fly host plants are permitted within 50 meters of the entry door of the pest-exclusionary structures. While trapping is being conducted, no fruit fly host material (such as fruit) may be brought into the pest-exclusionary structures or be discarded within 50 meters of the entry door of the pest-exclusionary structures.

(ii) A treatment jointly approved by the Israeli NPPO and APHIS must be applied for the duration of the eggplant harvest in the areas of the Arava Valley where fruit fly host material occurs in backyards.

(iii) Trapping for Medfly must be conducted by the Israeli NPPO or its approved designee throughout the year in the agricultural region along the Arava Highway 90 and in the residential area of Paran.

(iv) Trapping records must be kept and made available for APHIS review upon request.

(c) *Packinghouse procedures.* The eggplant must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. While packing the eggplant for export to the continental United States, the packinghouse may only accept eggplant from approved pest-exclusionary structures. No shade trees are permitted within 10 meters of the entry door of the packinghouse, and no fruit fly host plants are permitted within 50 meters of the entry door of the packinghouse. The eggplant must be safeguarded by a pest-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. Packinghouse procedures must include culling of any visibly damaged, overripe, or infested eggplant. The eggplant must be packed in either individual insect-proof cartons or boxes labeled with the specific place of origin or non-insect-proof cartons or boxes that are covered by insect-proof mesh or plastic tarpaulins. Covered non-insect-proof cartons or boxes must be placed in shipping containers that have identification labels indicating the specific place of origin. These safeguards must remain intact until the arrival of the eggplant in the continental United States or the consignment will not be allowed to enter the continental United States.

(d) *Commercial consignments.* Eggplant from Israel may be imported in commercial consignments only.

(e) *Phytosanitary certificate.* Each consignment of eggplant must be accompanied by a phytosanitary certificate of inspection issued by the Israeli NPPO with an additional declaration reading as follows: ''The eggplant in this consignment has been grown in an approved production site and inspected and found free of the pests listed in 7 CFR 319.56–49.''

(Approved by the Office of Management and Budget under control number 0579–0350)

Done in Washington, DC, this 28th day of May 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–12929 Filed 6–2–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 214 and 274a

[DHS No. ICEB–2008–0002; ICE No. 2124–08]

RIN 1653–AA56

Extending Period of Optional Practical Training by 17 Months for F–1 Nonimmigrant Students With STEM Degrees and Expanding Cap-Gap Relief for All F–1 Students With Pending H–1B Petitions; Correction

AGENCY: U.S. Immigration and Customs Enforcement, U.S. Citizenship and Immigration Services; DHS.

ACTION: Interim final rule; correction.

SUMMARY: With this amendment, the Department of Homeland Security (DHS) corrects one typographical error and corrects two inadvertent omissions from the Optional Practical Training (OPT) interim final rule (IFR) published in the **Federal Register** on April 8, 2008.

DATES: Effective June 3, 2009.

FOR FURTHER INFORMATION CONTACT: Louis Farrell, Director, Student and Exchange Visitor Program; U.S. Immigration and Customs Enforcement, Department of Homeland Security; Potomac Center North, 500 12th Street, SW., Washington, DC 20536.

SUPPLEMENTARY INFORMATION:

Need for Correction

On April 8, 2008, the Department of Homeland Security (DHS) published an interim final rule in the **Federal Register** at 73 FR 18944 extending the maximum period of Optional Practical

Training (OPT) from 12 months to 29 months for F–1 students who have completed a science, technology, engineering, or mathematics (STEM) degree with a degree code that is on the current STEM Designated Degree Program List, and who accept employment with employers enrolled in U.S. Citizenship and Immigration Services' (USCIS') E–Verify employment verification program. In that IFR, there was one typographical error and two inadvertent omissions. Through this amendment, DHS corrects those items.

First, DHS is correcting an error in the regulatory text of the interim final rule. The regulatory text that added new 8 CFR 274a.12(b)(6)(v) at 73 FR 18956 contains a typographical error. The paragraph begins with an unnecessary ''Or''. Through this amendment, DHS removes that extra word.

Second, DHS is correcting two inadvertent omissions. In the amendatory language for amendment 2b at 73 FR 18954, DHS inadvertently omitted a reference to the revision to 8 CFR 214.2(f)(10)(ii)(D). While that revision was in the regulatory text of the document submitted to the **Federal Register**, it was not in the amendatory language of the document submitted to the **Federal Register**, and so it would not be accurately codified in the Code of Federal Regulations. Also, amendment 5b at 73 FR 18956 revised 8 CFR 274a.12(c)(3). It should have only revised 8 CFR 274a.12(c)(3)(i). As a result, 8 CFR 274a.12(c)(3)(ii) and 274a.12(c)(3)(iii) were inadvertently omitted.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 8 CFR part 214 and 274a are amended as follows:

PART 214—NONIMMIGRANT CLASSES

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; section 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 8 CFR part 2.

■ 2. Section 214.2 is amended by revising paragraph (f)(10)(ii)(D) to read as follows:

§ 214.2 Special requirements for admission, extension and maintenance of status.

* * * * *

(f) * * *

(10) * * *

(ii) * * *

(D) *Duration of status while on post-completion OPT.* For a student with approved post-completion OPT, the duration of status is defined as the period beginning when the student's application for OPT was properly filed and pending approval, including the authorized period of post-completion OPT, and ending 60 days after the OPT employment authorization expires (allowing the student to prepare for departure, change educational levels at the same school, or transfer in accordance with paragraph (f)(8) of this section).

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 3. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

■ 4. Section 274a.12 is amended by:

■ a. Removing the word ''Or'' from the beginning of paragraph (b)(6)(v); and

■ b. Adding paragraphs (c)(3)(ii) and (iii).

The additions read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(3) * * *

(ii) Has been offered employment under the sponsorship of an international organization within the meaning of the International Organization Immunities Act (59 Stat. 669) and who presents a written certification from the international organization that the proposed employment is within the scope of the organization's sponsorship. The F–1 student must also present a Form I–20 ID or SEVIS Form I–20 with employment page completed by DSO certifying eligibility for employment; or

(iii) Is seeking employment because of severe economic hardship pursuant to 8 CFR 214.2(f)(9)(ii)(C) and has filed the Form I–20 ID and Form I–538 (for non-SEVIS schools), or SEVIS Form I–20 with employment page completed by the DSO certifying eligibility, and any other supporting materials such as affidavits which further detail the unforeseen economic circumstances that require the student to seek employment authorization.

* * * * *

Christina E. McDonald,

Deputy Associate General Counsel for Regulatory Affairs.

[FR Doc. E9–12861 Filed 6–2–09; 8:45 am]

BILLING CODE 9111–28–P

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1358]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board of Governors (Board) is amending the routing number guide to next-day availability checks and local checks in Regulation CC to delete the reference to the head office of the Federal Reserve Bank of Minneapolis and to reassign the Federal Reserve routing symbols currently listed under that office to the head office of the Federal Reserve Bank of Cleveland. These amendments reflect the restructuring of check-processing operations within the Federal Reserve System.

DATES: The final rule will become effective on July 25, 2009.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. H. Yeganeh, Financial Services Manager (202/728–5801), or Joseph P. Baressi, Financial Services Project Leader (202/452–3959), Division of Reserve Bank Operations and Payment Systems; or Dena L. Milligan, Attorney (202/452–3900), Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: Regulation CC establishes the maximum period a depositary bank may wait between receiving a deposit and making the deposited funds available for withdrawal.[1] A depositary bank

[1] For purposes of Regulation CC, the term ''bank'' refers to any depository institution, including

Continued

generally must provide faster availability for funds deposited by a ''local check'' than by a ''nonlocal check.'' A check is considered local if it is payable by or at or through a bank located in the same Federal Reserve check-processing region as the depositary bank.

Appendix A to Regulation CC contains a routing number guide that assists banks in identifying local and nonlocal banks and thereby determining the maximum permissible hold periods for most deposited checks. The appendix includes a list of each Federal Reserve check-processing office and the first four digits of the routing number, known as the Federal Reserve routing symbol, of each bank that is served by that office for check-processing purposes. Banks whose Federal Reserve routing symbols are grouped under the same office are in the same check-processing region and thus are local to one another.

On July 25, 2009, the Reserve Banks will transfer the check-processing operations of the head office of the Federal Reserve Bank of Minneapolis to the head office of the Federal Reserve Bank of Cleveland. As a result of this change, some checks that are drawn on and deposited at banks located in the Minneapolis and Cleveland check-processing regions and that currently are nonlocal checks will become local checks subject to faster availability schedules. To assist banks in identifying local and nonlocal checks and making funds availability decisions, the Board is amending the lists of routing symbols in appendix A associated with the Federal Reserve Banks of Minneapolis and Cleveland to reflect the transfer of check-processing operations from the head office of the Federal Reserve Bank of Minneapolis to the head office of the Federal Reserve Bank of Cleveland. To coincide with the effective date of the underlying check-processing changes, the amendments to appendix A are effective July 25, 2009. The Board is providing notice of the amendments at this time to give affected banks ample time to make any needed processing changes. Early notice also will enable affected banks to amend their availability schedules and related disclosures if necessary and provide their customers with notice of these changes.[2]

commercial banks, savings institutions, and credit unions.

[2] Section 229.18(e) of Regulation CC requires that banks notify account holders who are consumers within 30 days after implementing a change that improves the availability of funds.

Administrative Procedure Act

The Board has not followed the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of the final rule. The revisions to appendix A are technical in nature and are required by the statutory and regulatory definitions of ''check-processing region.'' Because there is no substantive change on which to seek public input, the Board has determined that the section 553(b) notice and comment procedures are unnecessary. In addition, the underlying consolidation of Federal Reserve Bank check-processing offices involves a matter relating to agency management, which is exempt from notice and comment procedures.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. The technical amendments to appendix A of Regulation CC will delete the reference to the head office of the Federal Reserve Bank of Minneapolis and reassign the routing symbols listed under that office to the head office of the Federal Reserve Bank of Cleveland. The depository institutions that are located in the affected check-processing regions and that include the routing numbers in their disclosure statements would be required to notify customers of the resulting change in availability under § 229.18(e). However, all paperwork collection procedures associated with Regulation CC already are in place, and the Board accordingly anticipates that no additional burden will be imposed as a result of this rulemaking.

List of Subjects in 12 CFR Part 229

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 229 to read as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001–4010, 12 U.S.C. 5001–5018.

■ 2. The Fourth and Ninth District routing symbol lists in appendix A are amended by removing the headings and listings for the Ninth Federal Reserve District and revising the listings for the Fourth Federal Reserve Districts to read as follows:

Appendix A to Part 229—Routing Number Guide to Next-Day Availability Checks and Local Checks

* * * * *

Fourth Federal Reserve District

[Federal Reserve Bank of Cleveland]

Head Office

0220	2220
0223	2223
0410	2410
0412	2412
0420	2420
0421	2421
0422	2422
0423	2423
0430	2430
0432	2432
0433	2433
0434	2434
0440	2440
0441	2441
0442	2442
0515	2515
0519	2519
0720	2720
0724	2724
0740	2740
0749	2749
0813	2813
0830	2830
0839	2839
0863	2863
0910	2910
0911	2911
0912	2912
0913	2913
0914	2914
0915	2915
0918	2918
0919	2919
0960	2960

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 27, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–12925 Filed 6–2–09; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

Interest Rate Restrictions on Insured Depository Institutions That Are Not Well Capitalized

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations relating to the interest rate restrictions that apply to insured depository institutions that are not well

capitalized. Under the amended regulations, such insured depository institutions generally will be permitted to offer the ''national rate'' plus 75 basis points. The ''national rate'' will be defined, for deposits of similar size and maturity, as a simple average of rates paid by all insured depository institutions and branches for which data are available. For those cases in which the FDIC determines that the national rate as published on the FDIC's Web site does not represent the prevailing rate in a particular market, as indicated by available evidence, the depository institution will be permitted to offer the prevailing rate in that market plus 75 basis points. The purpose of this final rule is to clarify the interest rate restrictions for certain insured depository institutions and examiners.

DATES: The final rule is effective December 3, 2009.

FOR FURTHER INFORMATION CONTACT: Louis J. Bervid, Senior Examination Specialist, Division of Supervision and Consumer Protection, (202) 898–6896 or *lbervid@fdic.gov*; or Christopher L. Hencke, Counsel, Legal Division, (202) 898–8839 or *chencke@fdic.gov*, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Section 29 of the Act

Section 29 of the Federal Deposit Insurance Act (''FDI Act'') provides that an insured depository institution that is not well capitalized may not accept deposits by or through deposit brokers. See 12 U.S.C. 1831f(a). Notwithstanding this prohibition, section 29 also provides that an adequately capitalized institution may accept brokered deposits if it obtains a waiver from the FDIC. *See* 12 U.S.C. 1831f(c). In contrast, an undercapitalized institution may not accept brokered deposits under any circumstances. *See* 12 U.S.C. 1831f(a) and (c).

The purpose of section 29 generally is to limit the acceptance or solicitation of deposits by insured depository institutions that are not well capitalized. This purpose is promoted through two means: (1) The prohibition against the acceptance of brokered deposits by depository institutions that are less than well capitalized (as described above); and (2) certain restrictions on the interest rates that may be paid by such institutions. In enacting section 29, Congress added the interest rate restrictions to prevent institutions from avoiding the prohibition against the acceptance of brokered deposits by soliciting deposits internally through ''money desk operations.'' Congress viewed the gathering of deposits by weaker institutions through either third-party brokers or ''money desk operations'' as potentially an unsafe or unsound practice. *See* H.R. Conf. Rep. No. 101–222 at 402–403 (1989), reprinted in 1989 U.S.C.C.A.N. 432, 441–42.

Section 29 imposes different interest rate restrictions on different categories of insured depository institutions that are less than well capitalized. These categories are (1) adequately capitalized institutions with waivers to accept brokered deposits; (2) adequately capitalized institutions without waivers to accept brokered deposits; and (3) undercapitalized institutions. The statutory restrictions for each category are described in detail below.

Adequately capitalized institutions with waivers to accept brokered deposits. Institutions in this category may not pay a rate of interest on deposits that ''significantly exceeds'' the following: ''(1) The rate paid on deposits of similar maturity in such institution's normal market area for deposits accepted in the institution's normal market area; or (2) the national rate paid on deposits of comparable maturity, as established by the [FDIC], for deposits accepted outside the institution's normal market area.'' 12 U.S.C. 1831f(e).

In this category, an institution must adhere to (or not ''significantly exceed'') the prevailing rates in its own ''normal market area'' only with respect to deposits accepted from that market area. For other deposits, the institution is permitted to offer (but not ''significantly exceed'') the ''national rate'' established by the FDIC. Thus, an institution in this category is not permitted to outbid local institutions for local deposits but is permitted to compete with non-local institutions for non-local deposits.

Adequately capitalized institutions without waivers to accept brokered deposits. In this category, institutions may not offer rates that ''are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.'' 12 U.S.C. 1831f(g)(3). In other words, the institution must adhere to the prevailing rates in its own ''normal market area'' for all deposits (whether local or non-local). Thus, the institution will be unable to compete with non-local institutions for non-local deposits unless the rates in the institution's own ''normal market area'' are competitive with the non-local rates.

For institutions in this category, the statute restricts interest rates in an indirect manner. Rather than simply setting forth an interest rate restriction for adequately capitalized institutions without waivers, the statute defines the term ''deposit broker'' to include ''any insured depository institution that is not well capitalized * * * which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.'' 12 U.S.C. 1831f(g)(3). In other words, the depository institution itself is a ''deposit broker'' if it offers rates significantly higher than the prevailing rates in its own ''normal market area.'' Without a waiver, the institution cannot accept deposits from a ''deposit broker.'' Thus, the institution cannot accept these deposits from itself. In this indirect manner, the statute prohibits institutions in this category from offering rates significantly higher than the prevailing rates in the institution's ''normal market area.''

Undercapitalized institutions. In this category, institutions may not offer rates ''that are significantly higher than the prevailing rates of interest on insured deposits (1) in such institution's normal market areas; or (2) in the market area in which such deposits would otherwise be accepted.'' 12 U.S.C. 1831f(h). Thus, for deposits in its own ''normal market area,'' an undercapitalized institution must offer rates that are not ''significantly higher'' than the local rates. For non-local deposits, the institution must offer rates that are not ''significantly higher'' than either (1) the institution's own local rates; or (2) the applicable non-local rates. In other words, the institution must adhere to the prevailing rates in its own ''normal market area'' for all deposits (whether local or non-local) and also must adhere to the prevailing rates in the non-local area for any non-local deposits. Thus, the institution will be unable to outbid non-local institutions for non-local deposits even if the non-local rates are lower than the rates in the institution's own ''normal market area.''

As described above, section 29 of the FDI Act imposes interest rate restrictions based on a depository institution's capital category (and whether the depository institution has obtained a waiver to accept brokered deposits). Also, section 29 authorizes the FDIC to ''impose, by regulation or order, such additional restrictions on the acceptance of brokered deposits by any institution as the [FDIC] may determine to be appropriate.'' 12 U.S.C. 1831f(f).

II. Section 337.6 of the FDIC's Regulations

The FDIC has implemented section 29 of the FDI Act through section 337.6 of the FDIC's regulations. See 12 CFR 337.6. Prior to its amendment through this final rule, section 337.6 added several significant definitions to the statutory rules. First, the ''national rate'' was defined. Second, the terms ''significantly exceeds'' and ''significantly higher'' were defined. Third, the term ''market area'' was defined. Each of these definitions, and the reasoning behind the definitions, are discussed in greater detail below.

The ''National Rate.'' In section 337.6, prior to the adoption of this final rule, the ''national rate'' was defined as follows: ''(1) 120 percent of the current yield on similar maturity U.S. Treasury obligations; or (2) In the case of any deposit at least half of which is uninsured, 130 percent of such applicable yield.'' 12 CFR 337.6(b)(2)(ii)(B). In defining the ''national rate'' in this manner, the FDIC relied upon the fact that such a definition is ''objective and simple to administer.'' 57 FR 23933, 23938 (June 5, 1992). By using percentages (120 percent or 130 percent of the yield on U.S. Treasury obligations) instead of a fixed number of basis points, the FDIC hoped to ''allow for greater flexibility should the spread to Treasury securities widen in a rising interest rate environment.'' Id. In deciding not to rely on published deposit rates, the FDIC offered the following explanation: ''The FDIC believes this approach would not be timely because data on market rates must be available on a substantially current basis to achieve the intended purpose of this provision and permit institutions to avoid violations. At this time, the FDIC has determined not to tie the national rate to a private publication. The FDIC has not been able to establish that such published rates sufficiently cover the markets for deposits of different sizes and maturities.'' *Id.* at 23939.

''Significantly Exceeds.'' Through section 337.6, the FDIC has provided that a rate of interest ''significantly exceeds'' another rate, or is ''significantly higher'' than another rate, if the first rate exceeds the second rate by more than 75 basis points. See 12 CFR 337.6(b)(2)(ii), (b)(3)(ii) and (b)(4). In adopting this standard, the FDIC offered the following explanation: ''Based upon the FDIC's experience with the brokered deposit prohibitions to date, it is believed that this number will allow insured depository institutions subject to the interest rate ceilings * * * to compete for funds within markets, and yet constrain their ability to attract funds by paying rates significantly higher than prevailing rates.'' 57 FR at 23939.

''Market Area.'' In section 337.6, the term ''market area'' is defined as follows: ''A market area is any readily defined geographical area in which the rates offered by any one insured depository institution soliciting deposits in that area may affect the rates offered by other insured depository institutions operating in the same area.'' 12 CFR 337.6(b)(4). In adopting this definition, the FDIC offered the following explanation: ''Under the final rule, the market area will be determined pragmatically, on a case-by-case basis, based on the evident or likely impact of a depository institution's solicitation of deposits in a particular area, taking into account the means and media used and volume and sources of deposits resulting from such solicitation.'' 57 FR at 23939.

These rules and definitions in section 337.6 have been difficult for insured depository institutions and examiners to apply. Prior to the adoption of this final rule, one issue was that section 337.6 defined ''market area'' but did not define ''normal market area.'' In the absence of a definition, institutions and examiners struggled to determine ''normal market areas.'' [1]

Another issue was that the definition of the ''national rate'' became outdated. As discussed above, prior to the adoption of this final rule, the ''national rate'' was defined as ''120 percent of the current yield on similar U.S. Treasury obligations'' (or 130 percent in the case of a deposit ''at least half of which is uninsured''). 12 CFR 337.6(b)(2)(ii)(B). For many years, this definition functioned well because rates on Treasury obligations tracked closely with rates on deposits. At present, however, the rates on certain Treasury obligations are low compared to deposit rates. Consequently, the ''national rate'' as defined in the FDIC's regulations has been artificially low. By setting a low rate, the FDIC's regulations required some insured depository institutions to offer unreasonably low rates on some deposits, thereby restricting access even to market-rate funding.

III. The Proposed Rule

In response to the issues discussed above, the FDIC sought public comments on a proposed rule. *See* 74 FR 5904 (February 3, 2009). Through the proposed rule, the FDIC addressed two basic problems: (1) The obsolescence of the FDIC's definition of the ''national rate''; and (2) the difficulty experienced by insured depository institutions and examiners in determining prevailing rates in ''normal market areas'' and other market areas.

In response to the first problem, the FDIC proposed to redefine the ''national rate'' as ''a simple average of rates paid by all insured depository institutions and branches for which data are available.'' In other words, the FDIC proposed to sever the connection between the national rate and the yield on U.S. Treasury obligations.

In response to the second problem, the FDIC proposed to create a presumption that the prevailing rate in any market would be the national rate (as defined above). An insured depository institution could rebut this presumption by presenting evidence to the FDIC that the prevailing rate in a particular market is higher than the national rate. If the FDIC agreed with this evidence, the institution would be permitted to pay as much as 75 basis points above the local prevailing rate.

IV. The Comments

In response to the publication of the proposed rule, the FDIC received twenty comments from insured depository institutions, banking associations and bank service providers. Some commenters urged the FDIC to adopt tougher interest rate restrictions on insured depository institutions that are not well capitalized. They expressed concern that such institutions, through high interest rates, are driving up costs for healthy banks. Most commenters, however, urged the FDIC to provide insured depository institutions with greater flexibility in offering interest rates.

The commenters did not dispute that the ''national rate'' has become outdated. Also, they generally supported the concept of allowing an insured depository institution to submit evidence that the national rate, in a particular market, does not represent the actual prevailing rate. In regard to determining the prevailing or applicable rate in a particular market, the commenters made various suggestions including the following:

- A bank should be free to choose any of the following rates as the applicable prevailing rate: (1) The national rate; (2) the State rate; (3) the ''metropolitan statistical area'' or ''MSA'' rate; or (4) the Internet rate (for Internet banks).

[1] Prior to 1992, the term ''normal market area'' was defined in a footnote in section 337.6. Under this definition, a depository institution's ''normal market area'' depended upon the institution's advertising practices in soliciting deposits. *See* 12 CFR 337.6(a)(1)(ii) (1992) (footnote 11).

• The prevailing rate should be based upon the rates offered by insured depository institutions but also should be based upon the rates offered by credit unions (and perhaps other entities not insured by the FDIC).

• The prevailing rate should be based upon the highest rates in a market. The lowest rates should not be considered because banks offering low rates are not competing for deposits.

• Different rates should apply to different deposit products. For example, time deposits should not be compared to deposits without maturity dates. Further, deposits without maturity dates should be divided into smaller categories based on distinct features (for example, ''money market deposit accounts'' or ''MMDAs'' could be separated from ''negotiable order of withdrawal'' or ''NOW'' accounts).

• Certain types of deposit accounts (such as transaction accounts) should be exempt from any interest rate restrictions because such accounts represent core deposits.

V. The Final Rule

After considering the comments, the FDIC has decided to adopt certain amendments to section 337.6. Each of these amendments is discussed in turn below.

Paragraph (a)(5)(iii). Prior to the adoption of the final rule, this paragraph provided that the term ''deposit broker'' includes ''any insured depository institution that is not well capitalized, and any employee of any such insured depository institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.'' This provision in the regulations is based upon corresponding language in the statute itself. *See* 12 U.S.C. 1831f(g)(3). As previously discussed, the effect of this provision is to prohibit certain insured depository institutions (adequately capitalized institutions without waivers to accept brokered deposits) from offering rates of interest significantly higher than the prevailing rates in the institution's normal market area.

Through the proposed rule, the FDIC proposed adding the following sentence: ''For purposes of this paragraph, the prevailing rates of interest in such depository institution's normal market area shall be deemed to be the national rate as defined in paragraph (b)(2)(ii)(B) unless the FDIC determines, based on available evidence, that the prevailing rates differ from the national rate.'' Through the final rule, the FDIC has adopted the substance of this provision but the FDIC has decided not to add this sentence to paragraph (a)(5)(iii). Rather, the FDIC has moved this provision to new paragraph (e) (discussed below).

Paragraph (b)(2)(ii)(B). As amended by the final rule, this paragraph defines the ''national rate'' as follows: ''[T]he national rate shall be a simple average of rates paid by all insured depository institutions and branches for which data are available. This rate shall be determined by the FDIC.''

In adopting this definition, the FDIC does not mean to prevent insured depository institutions from offering evidence that the prevailing rate in a particular market differs from the national rate. On the contrary, the FDIC will allow insured depository institutions to submit such evidence under new paragraph (e) (discussed below). The purpose of this paragraph (b)(2)(ii)(B) is simply to provide insured depository institutions and examiners with a clear ''safe harbor'' that can be used in determining permissible rates. This ''safe harbor'' (*i.e.,* the rate published by the FDIC) will be based upon the rates offered by all insured depository institutions and branches.

The FDIC intends to publish or post the national rate on its Web site. In publishing the national rate, the FDIC would publish separate rates for deposits of different amounts and maturities. In addition, the FDIC might publish separate rates for different types of deposit products. For example, the FDIC might publish a rate for NOW accounts and a separate rate for MMDAs.

Some commenters suggested that the FDIC's definition of the ''national rate'' (based on all insured depository institutions and branches) is too strict. These commenters argued that the FDIC, in calculating a national average, should use no institutions or branches except those offering the highest rates.

For two reasons, the FDIC has not adopted this suggestion. First, the exclusion of the rates offered by some insured depository institutions and branches would result in a national rate that does not represent a true average national rate. On the contrary, the exclusion of low rates would produce a national rate that exceeds the true average. Such a rate would fail to serve as a meaningful restriction on insured depository institutions that are not well capitalized. Second, for cases in which the FDIC's published national rate does not represent the actual prevailing rate in a particular market, the FDIC believes that insured depository institutions will be given a fair opportunity to establish the prevailing rate through new paragraph (e) (discussed below).

Paragraph (b)(4). Prior to the adoption of the final rule, this paragraph defined ''market area.'' Also, this paragraph set forth a procedure (interpolation) for determining average or effective yields on time deposits with odd maturities in a particular market area. Through the final rule, the substance of these provisions has not been changed but the provisions have been moved to new paragraph (e) (discussed below).

By its own terms, paragraph (b)(4) applied solely to the interest rate restrictions applicable to (1) adequately capitalized insured depository institutions with waivers to accept brokered deposits (*see* paragraph (b)(2)(ii)(A)); and (2) undercapitalized insured depository institutions (*see* paragraph (b)(3)(ii)). It did not apply to the interest rate restrictions applicable to adequately capitalized insured depository institutions without waivers to accept brokered deposits (*see* paragraph (a)(5)(iii)). This limitation on paragraph (b)(4) was illogical. For this reason, through the final rule, the FDIC has removed paragraph (b)(4) and moved its provisions to new paragraph (e). The latter paragraph is discussed below.

Paragraph (e). Under new paragraph (e), ''a presumption shall exist that the effective yield in the relevant market is the national rate * * * unless the FDIC determines, based on available evidence, that the effective yield differs from the national rate.'' Under this provision, an institution not choosing to avail itself of the national rate will be able to assert it is operating in a high-rate environment and provide evidence of such to the appropriate FDIC regional office. In evaluating this evidence, the FDIC may use segmented market rate information (for example, evidence by State, county or MSA). Also, the FDIC may consider evidence as to the rates offered by credit unions but only if the insured depository institution competes directly with the credit unions in the particular market. Finally, the FDIC may consider evidence that the rates on certain deposit products differ from the rates on other products. For example, in a particular market, the rates on NOW accounts might differ from the rates on MMDAs. NOW accounts might be distinguished from MMDAs because the two types of accounts are subject to different legal requirements. See 12 U.S.C. 1832 and 12 CFR 204.2(e)(2) (dealing with NOW accounts); 12 CFR 204.2(d)(2) (dealing with MMDAs).

The FDIC does not intend, however, to provide the insured depository institution (being less than well capitalized) with complete freedom in determining the prevailing rates on various deposit products. For example, the FDIC will not consider alleged distinctions between the MMDAs offered by one insured depository institution and the MMDAs offered by other insured depository institutions in the same market. Such an approach would enable an insured depository institution, by adding special features to its deposit products, to avoid comparison to the interest rates offered by other insured depository institutions located in the same area. This result would be inconsistent with the purpose of section 29 of the FDI Act, which is meant to restrict the interest rates that can be offered by insured depository institutions that are not well capitalized.

Though the final rule revises the definition of the ''national rate'' and changes the methodology for determining prevailing rates in different markets, the final rule does not change the meaning of ''significantly exceeds'' or ''significantly higher.'' Under the amended regulations, an interest rate will continue to be ''significantly higher'' than a second rate if the first rate exceeds the second rate by more than 75 basis points. Most of the commenters did not object to this standard.

The final rule will not become effective until six months after the date of publication in the **Federal Register**. The FDIC believes that a delayed effective date may be necessary to enable insured depository institutions to adjust to the new rules. Notwithstanding this delayed effective date, the FDIC intends to post national average rates on its Web site immediately. These rates may assist insured depository institutions in complying with the current rules as well as the new rules. Indeed, under either set of rules, the staff believes that the national average rates may represent the prevailing rates in many market areas. For this reason, the FDIC would not object to the immediate use of the posted rates by an insured depository institution that is not well capitalized though such use will not be mandatory.

VI. Conclusion

The purpose of the final rule is to provide examiners and insured depository institutions that are not well capitalized with a clear method for determining the highest permissible interest rates. Under the amended regulations, an insured depository institution will be able to ascertain the ''national rate'' and the applicable rate cap by checking the FDIC's Web site. In those cases in which the depository institution believes that the average rate in a relevant market exceeds the national rate, the depository institution will be permitted to offer evidence of such higher rate. Assuming the evidence confirms the higher rate, the institution will be permitted to offer rates up to the higher rate cap.

Community Development and Regulatory Improvement Act

The final rule does not impose any new reporting or disclosure requirements on insured depository institutions under the Riegle Community Development and Regulatory Improvement Act.

Paperwork Reduction Act

The final rule does not involve any new collections of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information collection has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the FDIC certifies that the final rule will not have a significant impact on a substantial number of small entities. This conclusion is based upon the fact that the final rule merely clarifies the interest rate restrictions set forth in the Federal Deposit Insurance Act. The final rule does not impose any new restrictions. Indeed, under the final rule, the burden of determining compliance with the interest rate restrictions will be eased because insured depository institutions that are not well capitalized (including any small entities) can rely on the ''national rate'' determined by the FDIC. In those cases in which the insured depository institution believes that the rates in its ''normal market area'' exceed the ''national rate,'' the final rule permits the institution to offer evidence of the ''normal market area'' rates just as the former rules permitted institutions to offer evidence of ''normal market area'' rates.

Impact on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC requested comments on this issue but received none.

List of Subjects in 12 CFR Part 337

Banks, Banking, Reporting and recordkeeping requirements, Savings associations, Securities.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends part 337 of title 12 of the Code of Federal Regulations as follows:

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

■ 1. The authority citation for part 337 is revised to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1820(d)(10), 1821(f), 1828(j)(2), 1831, 1831f.

■ 2. In § 337.6, paragraph (b)(2)(ii)(B) is revised, paragraph (b)(4) is removed, and paragraph (e) is added to read as follows:

§ 337.6 Brokered deposits.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) The national rate paid on deposits of comparable size and maturity for deposits accepted outside the institution's normal market area. For purposes of this paragraph (b)(2)(ii)(B), the national rate shall be a simple average of rates paid by all insured depository institutions and branches for which data are available. This rate shall be determined by the FDIC.

* * * * *

(e) A market is any readily defined geographical area in which the rates offered by any one insured depository institution soliciting deposits in that area may affect the rates offered by other insured depository institutions operating in the same area. For purposes of this § 337.6, a presumption shall exist that the prevailing rate or effective yield in the relevant market is the national rate as defined in paragraph (b)(2)(ii)(B) of this section unless the FDIC determines, based on available evidence, that the effective yield differs from the national rate. The effective yield on a deposit with an odd maturity shall be determined by interpolating between the yields offered by other insured depository institutions on

deposits of the next longer and shorter maturities offered in the market.

Dated at Washington, DC, this 29th day of May, 2009.

Authorized to be published in the **Federal Register** by Order of the Board of Directors of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–12938 Filed 6–2–09; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 370

RIN 3064–AD37

Amendment of the Temporary Liquidity Guarantee Program To Extend the Debt Guarantee Program and To Impose Surcharges on Assessments for Certain Debt Issued on or After April 1, 2009

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is issuing this final rule to amend the Temporary Liquidity Guarantee Program (TLGP) by providing a limited extension of the Debt Guarantee Program (DGP) for insured depository institutions (IDIs) participating in the DGP. The extended DGP also applies to other participating entities; however, other participating entities that did not issue FDIC-guaranteed debt before April 1, 2009 are required to submit an application to and obtain approval from the FDIC to participate in the extended DGP. The final rule imposes surcharges on certain debt issued on or after April 1, 2009. Any surcharge collected will be deposited into the Deposit Insurance Fund (DIF or Fund). The final rule also establishes an application process whereby entities participating in the extended DGP may apply to issue non-FDIC-guaranteed debt during the extension period. The final rule restates without change the interim rule published in the **Federal Register** by the FDIC on March 23, 2009.[1]

DATES: Effective June 3, 2009.

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SUPPLEMENTARY INFORMATION

I. Background

The FDIC adopted the TLGP in October 2008 following a determination of systemic risk by the Secretary of the Treasury (after consultation with the President) that was supported by recommendations from the FDIC and the Board of Governors of the Federal Reserve System (Federal Reserve).[2] The TLGP is part of a coordinated effort by the FDIC, the U.S. Department of the Treasury (Treasury), and the Federal Reserve to address unprecedented disruptions in credit markets and the resultant inability of financial institutions to fund themselves and make loans to creditworthy borrowers.

The steps taken to stabilize the nation's financial system by the Congress, the Treasury, and the federal banking agencies have improved conditions in the U.S. credit markets. While liquidity in the financial markets has not returned to pre-crisis levels, the TLGP debt guarantee program has benefited participating IDIs, bank and certain savings and loan holding companies, and certain of their affiliates by improving their options for short-term and intermediate-term funding.

On March 17, 2009, the FDIC's Board of Directors (Board) adopted an interim rule that amended the TLGP by providing for a limited extension of the DGP, imposing surcharges on assessments for certain debt issued on or after April 1, 2009, and providing procedures to enable participating entities to issue certain non-guaranteed debt.[3] This amendment was designed to reduce market disruption at the conclusion of the TLGP by facilitating the orderly phase-out of the DGP and encouraging participating entities to use the limited extension of the DGP to plan for a successful return to sources of non-FDIC-guaranteed funding markets.

II. The Interim Rule

On March 17, 2009, the FDIC's Board adopted an interim rule with request for comment that amended the TLGP by providing for a limited extension of the DGP, surcharges for certain debt issuances, and procedures for participating entities to issue certain non-guaranteed debt. The interim rule was published in the **Federal Register** on March 23, 2009. As discussed in the section that follows, commenters generally favored the interim rule. Accordingly, the FDIC is implementing the interim rule as a final rule without change.

III. Summary of Comments

The FDIC received two comments on the interim rule from groups representing the banking industry. Both commenters supported the amendments to the DGP made in the interim rule.

The commenters specifically endorsed the surcharges placed on certain FDIC-guaranteed debt and made applicable to all participating entities that issued FDIC-guaranteed debt after April 1, 2009. In the event of the diminution of the Deposit Insurance Fund (DIF) caused by TLGP losses, if any, the commenters noted that only IDIs would be required to fund a special assessment to replenish the DIF, though IDIs have not been the primary users of the program.[4] Depositing surcharges directly into the DIF was viewed by these commenters as an appropriate recognition of the possible exposure that all IDIs, both participating and non-participating, could face in the event of losses caused by the TLGP. The commenters also welcomed the potential for a corresponding decrease in standard assessments for IDIs that could result from the deposit of the surcharges into the DIF.

[1] 74 FR 12078 (March 23, 2009).

[2] See Section 13(c)(4)(G) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1823(c)(4)(G). The determination of systemic risk authorized the FDIC to take actions to avoid or mitigate serious adverse effects on economic conditions or financial stability, and the FDIC implemented the TLGP in response.

Section 9(a) Tenth of the FDI Act, 12 U.S.C. 1819(a)Tenth, provides additional authority for the establishment of the TLGP.

[3] 74 FR 12078 (March 23, 2009).

[4] Section 204(d) of the *Helping Families Save Their Homes Act of 2009* (Pub. L. 111–22), enacted on May 20, 2009, authorized the FDIC to impose a special assessment on depository institution holding companies (with the concurrence of the Secretary of the Treasury) to recover losses to the Deposit Insurance Fund arising from action taken or assistance provided with respect to an insured depository institution following a system risk determination made pursuant to section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act.

One commenter applauded the FDIC's efforts to unwind the DGP as described in the interim rule. The commenter favorably noted that the interim rule encouraged participating entities to return to the non-FDIC-guaranteed debt market by, for example, establishing procedures for issuing non-FDIC-guaranteed debt during the extended DGP and implementing the aforementioned surcharges.

Noting the changes that have occurred in the TLGP since its inception in October 2008, one commenter suggested that the FDIC provide a second opportunity for eligible entities to opt-in to the program. As the FDIC stated in the interim rule, the purpose of the amendments to the TLGP are to ensure an orderly phase-out of the program. Providing a second opportunity to opt-in to the DGP would be contrary to this effort. The FDIC believes that the TLGP has provided reliable and cost-efficient liquidity support to financial institutions with demonstrated funding needs. Institutions that have elected to opt-out of the TLGP are perceived as less likely to have such funding needs and, therefore, the FDIC believes that providing a second opportunity to opt-in to the DGP—as the program winds down—would be of marginal benefit to the industry.

One commenter suggested that the interim rule be revised to permit an IDI with capacity under its existing debt limit to transfer that capacity to its holding company so that the guaranteed debt could be issued by the holding company rather than by the IDI. Under the TLGP, debt guarantee limits were based on the liquidity needs of an entity as determined by senior unsecured debt outstanding on September 30, 2008 (or 2 percent of liabilities for IDIs without any outstanding senior unsecured debt on September 30, 2008). Holding companies that regularly issued debt on behalf of its subsidiary IDIs presumably would have had such debt outstanding on September 30, 2008, and their debt guarantee limits for purposes of the TLGP would have been established accordingly. The purpose of the TLGP was not to establish a new or expanded debt market for holding companies. Instead, a primary focus of the TLGP was to encourage interbank lending. Without case-by-case analysis, the FDIC believes it would be inconsistent with the purpose of the TLGP to permit any holding company that had not previously issued debt on behalf of its subsidiary IDI to rely on its IDI's debt limit to establish or enhance its own debt issuances. The FDIC notes, however, that part 370 permits any participating entity to request an increase in its debt guarantee limit, and the FDIC will continue to consider such applications on a case-by-case basis.[5]

IV. The Final Rule

The FDIC has implemented the interim rule as a final rule without change. As discussed below, the final rule restates the three primary amendments to the TLGP announced in the interim rule: it provides for a limited extension of the DGP; imposes surcharges on assessments for certain debt issuances; and establishes procedures whereby a participating entity can apply to issue certain debt that is not guaranteed by the FDIC.

A. Extension of the Debt Guarantee Program for IDIs Participating in the TLGP

Under the version of the DGP that existed before the interim rule was issued, participating entities were permitted to issue senior unsecured debt until June 30, 2009. The FDIC guarantee for such this debt extended until the earlier of the maturity of the debt or June 30, 2012.

Like the interim rule, the final rule provides a limited four-month extension for the issuance of debt under the DGP and is consistent with extensions to other liquidity programs recently announced by the Federal Reserve.[6] The final rule permits all IDIs participating in the DGP to issue FDIC-guaranteed senior unsecured debt until October 31, 2009. For debt issued on or after April 1, 2009, the final rule restates without change those provisions of the interim rule that extended the FDIC's guarantee until the earliest of the opt-out date, the maturity of the debt, the mandatory conversion date for mandatory convertible debt, or December 31, 2012.

B. Extension of the Debt Guarantee Program for Other Entities Participating in the TLGP

As with the interim rule, the final rule permits other participating entities that issued FDIC-guaranteed debt before April 1, 2009, to participate in the extended DGP without application. However, other participating entities that did not issue FDIC-guaranteed debt before April 1, 2009, are required to apply to and receive approval from the FDIC to participate in the extended DGP.[7] The deadline for submitting an application to participate in the extended DGP continues to be June 30, 2009. The FDIC will review such applications on a case-by-case basis. Absent such application and approval, the FDIC's guarantee will expire for such entities no later than June 30, 2012.

This final rule will not change a participating entity's existing debt guarantee limit or affect any conditions that the FDIC may have placed on the issuance of debt by an IDI or other participating entity. In addition, the FDIC reiterates that, consistent with prudent liquidity management practices, issuance levels under the DGP should be consistent with existing funding plans and estimated liquidity needs. The chart that follows provides a summary of the relevant dates for entities that participate (and those that do not participate) in the extended DGP.

[5] 12 CFR 370.3(h)(1)(i).

[6] 2009 Monetary Press Release, Release Date: February 3, 2009, *http://www.federalreserve.gov/newsevents/press/monetary/20090203a.htm* (last visited February 20, 2009) (announcing four-month extensions until October 2009 of six liquidity programs originally scheduled to expire in April 2009).

[7] Unlike IDIs (for whom the FDIC has either primary or backup supervision authority) and other participating entities that issued debt before April 1, 2009 (for whom the FDIC is aware of current debt issuances and the evolving financial condition of those entities), for other participating entities that did not issue debt before April 1, 2009, the FDIC has chosen to mitigate its risk during the extension period by establishing an application process that will enable the FDIC to become more familiar with the current financial situation for these entities and with their plans for issuing debt during the extension period.

	Application date	Issue date	Guarantee expiration date
IDIs currently participating in the DGP, and other participating entities that have issued FDIC-guaranteed debt before April 1, 2009.	Not required to submit an application to participate in the extension of the DGP.	Senior unsecured debt may be issued no later than Oct. 31, 2009.	For debt issued on or after April 1, 2009, FDIC-guarantee of senior unsecured debt expires on the earliest of the mandatory conversion date for mandatory convertible debt, the stated date of maturity, or Dec. 31, 2012.
Other participating entities that have not issued FDIC-guaranteed debt before April 1, 2009, which have received approval to participate in the extension of the DGP.	Application due on or before June 30, 2009.	With FDIC approval, senior unsecured debt may be issued no later than Oct. 31, 2009.	For debt issued on or after April 1, 2009, with FDIC approval, FDIC-guarantee of senior unsecured debt expires on the earliest of the mandatory conversion date for mandatory convertible debt, the stated date of maturity, or Dec. 31, 2012.
Other participating entities currently participating in the DGP, but not participating in the extension of the DGP.	N/A	Senior unsecured debt may be issued no later than June 30, 2009.	FDIC-guarantee of senior unsecured debt expires on the earliest of the mandatory conversion date for mandatory convertible debt, the stated date of maturity, or June 30, 2012.

C. Surcharges on Assessments for Certain Debt Issued on or After April 1, 2009

As with the interim rule, surcharges provided for in the final rule will continue to be imposed on an annualized basis and apply only to FDIC-guaranteed debt with maturities (or, in the case of mandatory convertible debt, time periods to conversion) of at least one year; the assessment rates for shorter term FDIC-guaranteed debt remain unchanged, as do the rates for guaranteed debt issued before April 1, 2009.

For FDIC-guaranteed debt with maturities (or, in the case of mandatory convertible debt, time periods to conversion) of at least one year issued on or after April 1, 2009, until and including June 30, 2009, and maturing on or before June 30, 2012, the annualized surcharge on the assessments continues to be 10 basis points for IDIs and 20 basis points for other participating entities, as provided for in the interim rule.

Like the interim rule, the final rule also imposes an additional surcharge on assessments for FDIC-guaranteed debt issued under the extended DGP—that is, FDIC-guaranteed debt issued after June 30, 2009 and on or before October 31, 2009, or FDIC-guaranteed debt issued on or after April 1, 2009 with a maturity date after June 30, 2012. The annualized surcharge on the assessments for IDIs is 25 basis points. For other participating entities that issued FDIC-guaranteed debt under the DGP before April 1, 2009 (and for such entities that did not issue FDIC-guaranteed debt under the DGP before April 1, 2009, but that have been approved by the FDIC to participate in the extended DGP), the annualized surcharge on assessments is 50 basis points.

The final rule provides that the surcharges on assessments imposed on both IDIs and other participating entities remain the same as provided for in the interim rule.[8] As such, the surcharges for IDIs would remain slightly lower than those imposed on other entities participating in the DGP. The FDIC believes that this differential remains appropriate because entities other than IDIs, for which the FDIC has limited supervisory authority, present more uncertainty to the FDIC.

Unlike other TLGP fees, which are reserved for possible TLGP losses and not generally available for DIF purposes, the amount of any surcharge collected in connection with the extended DGP will be deposited into the DIF and used by the FDIC when calculating the reserve ratio of the Fund. The FDIC has every expectation that the TLGP will pay for itself and has set TLGP fees accordingly.

The surcharge provisions recognize that a relatively small portion of the industry is actively using the DGP, but all IDIs ultimately bear the risk that a systemic risk assessment might be necessary to recover any excess losses attributable to the program. The surcharge is intended to compensate the DIF members, even those that did not issue FDIC-guaranteed debt, by increasing funds deposited directly into the DIF, for bearing the risk that TLGP fees will be insufficient and that a systemic risk assessment will be levied.

The surcharges also are intended to reduce the subsidy provided by the DGP and to encourage institutions to seek funding in ways that do not involve government guarantees, so that the DGP can be unwound in an orderly fashion. The DGP extension also partially addresses potential competitive disparities with similar programs in other countries. The FDIC anticipates that the amount of revenue that the surcharge produces will enable the FDIC to reduce the amount of the special assessment provided for in the interim rule adopted on February 27, 2009.[9]

D. Opportunity To Apply To Issue Non-Guaranteed Debt

As with the interim rule, the final rule provides that any entities participating in the extended DGP may apply to the FDIC to issue non-FDIC-guaranteed debt after June 30, 2009. If approved, such entities may issue non-guaranteed debt after June 30, 2009, with any maturity and without paying any additional fee to the FDIC.[10]

[8] Recent amendments to the FDI Act provide the FDIC with additional authority to make special emergency assessments of both IDIs and depository institution holding companies (with the concurrence of the Secretary of the Treasury), if necessary. See footnote 4.

[9] *See* 74 FR 9525 (March 4, 2009).

[10] Some participating entities elected to pay a fee to issue long-term non-guaranteed debt that could mature beyond June 30, 2012, pursuant to 12 CFR 370.6(f). These entities may continue to issue long-term non-guaranteed debt without additional application to the FDIC.

If those entities are eligible to participate in the extension of the TLGP, the final rule, like the interim rule, requires such entities to apply to, and

Continued

V. Regulatory Analysis and Procedure

A. Administrative Procedure Act

The process of amending Part 370 by means of this final rule is governed by the Administrative Procedure Act (APA). Pursuant to section 553(b)(B) of the APA, general notice and opportunity for public comment are not required with respect to a rule making when an agency for good cause finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Consistent with section 553(b)(B) of the APA, in publishing the interim rule, the FDIC invoked the good cause exception based on the unprecedented disruption in credit markets resulting from the severe financial conditions that threaten the nation's economy and the stability of the banking system. (Nonetheless, the FDIC solicited comments on the interim rule, and has fully considered the comments that were submitted.) For similar reasons, the FDIC confirms that the good cause exception, provided for in section 553(b)(B) of the APA, applies to the final rule.

Section 553(d)(3) of the APA provides that the publication of a rule shall be made not less than 30 days before its effective date, except ''* * * (3) as otherwise provided by the agency for good cause found and published with the rule.'' For reasons that supported its invocation of the good cause exception to section 553(b)(B) of the APA, the FDIC relied upon the good cause exception to section 553(d)(3) and published the interim rule with an immediate effective date. For similar reasons, the FDIC invokes the good cause exception provided for in section 553(d)(3) and provides for an immediate effective date for this final rule.

B. Riegle Community Development and Regulatory Improvement Act

The Riegle Community Development and Regulatory Improvement Act (RCDRIA) provides that any new regulations or amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosures, or other new requirements on IDIs shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form, unless the agency determines, for good cause published with the rule, that the rule should become effective before such time.[11] For the same reasons discussed above, the FDIC finds that good cause exists for an immediate effective date for the final rule.

C. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget (OMB) has determined that this final rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA), 5 U.S.C. 801 *et seq.* As required by SBREFA, the FDIC will file the appropriate reports with Congress and the Government Accountability Office so that the interim rule may be reviewed.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354, Sept. 19, 1980) (RFA) applies only to rules for which an agency publishes a general notice of proposed rule making pursuant to 5 U.S.C. 553(b). As discussed above, consistent with section 553(b)(B) of the APA, the FDIC has determined for good cause that general notice and opportunity for public comment would be impracticable and contrary to the public interest. Therefore, the RFA, pursuant to 5 U.S.C. 601(2), does not apply.

E. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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 interim rule contained two reporting requirements that revised an existing OMB-approved information collection, entitled the ''Temporary Liquidity Guarantee Program (OMB No. 3064–0166). Both reporting requirements are retained in the final rule. Specifically, section 370.3(h)(1)(vi) requires certain participating entities that did not issue FDIC-guaranteed debt before April 1, 2009 and that wish to participate in the extended DGP to submit a written application to the FDIC. Any such application must be submitted on or before June 30, 2009. In addition, section 370.3(h)(1)(vii) requires certain participating entities that wishes to issue non-FDIC-guaranteed debt after June 30, 2009, to submit a written application to the FDIC. The estimated burden for the new applications, as set forth in the interim and final rules, is as follows:

Title: Temporary Liquidity Guarantee Program.

OMB Number: 3064–0166.

Estimated Number of Respondents:

Application to issue non-guaranteed debt—1,000.

Application by a certain participating entity that has not issued FDIC-guaranteed debt before April 1, 2009, to participate in the extended DGP–25.

Frequency of Response:

Application to issue non-guaranteed debt—once.

Application by a certain participating entity that has not issued FDIC-guaranteed debt before April 1, 2009, to participate in the extended DGP—once.

Affected Public: IDIs, thrift holding companies, bank and financial holding companies, and affiliates of IDIs.

Average time per response:

Application to issue non-guaranteed debt—2 hours.

Application by a certain participating entity that has not issued FDIC-guaranteed debt before April 1, 2009, to participate in the extended DGP—2 hours.

Estimated Annual Burden:

Application to issue non-guaranteed debt—2,000 hours.

Application by a certain participating entity that has not issued FDIC-guaranteed debt before April 1, 2009, to participate in the extended DGP—50 hours.

Previous annual burden—2,201,625 hours.

Total new burden—2,050.

Total annual burden—2,203,675 hours.

On March 17, 2009, the FDIC requested and received approval under OMB's emergency clearance procedures to revise the Temporary Liquidity Guarantee Program information collection to incorporate the paperwork burden associated with applications to issue non-guaranteed debt and applications to participate in the extended DGP. The interim rule document requested comment on the paperwork burden; however, no responsive comments to this request were received. With issuance of the final rule, the FDIC will follow its request for OMB approval under emergency clearance procedures with a request for approval under normal clearance procedures, including an initial 60-day request, and subsequent 30-day request, for comments on: (1) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (2) the accuracy of the estimates of the burden of the information collection, including the validity of the methodologies and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the

obtain the prior approval of, the FDIC in order to issue non-guaranteed debt that matures before June 30, 2012. No additional fee would be payable to the FDIC in order to issue such debt.

[11] 12 U.S.C. 4802.

burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Pending publication of the initial 60-day notice, interested parties are invited to submit written comments on the estimated burden for applications to issue non-guaranteed debt and to participate in the extended DGP by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Leneta Gregorie (202–898–3719), Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comment may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. All comments should refer to the name and number of the collection.

F. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invites your comments on how to make this regulation easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could the FDIC do to make the regulation easier to understand?

G. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 370

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Reporting and recordkeeping requirements, Savings associations.

■ Accordingly, the interim rule amending 12 CFR Part 370, which was published at 74 FR 12078 on March 23, 2009, is adopted as a final rule without change.

Dated at Washington, DC, this 29th day of May 2009.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–12943 Filed 6–2–09; 8:45 am]

BILLING CODE 6714–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0314; FRL–8906–1]

Revisions to the California State Implementation Plan, San Diego Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Diego Air Pollution Control District (SDAPCD) portion of the California State Implementation Plan (SIP). Rule 27.1—Federal Requirements for the San Diego County Air Pollution Control District's Alternative Mobile Source Emission Reduction Program Approved on September 8, 2000, will allow stationary sources to use emission reduction credits of nitrogen oxides (NO_X) generated from mobile sources as New Source Review (NSR) offsets. We are approving Rule 27.1 under authority of the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on August 3, 2009 without further notice, unless EPA receives adverse comments by July 6, 2009. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0314, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
- *E-mail: R9airpermits@epa.gov.*
- *Mail or deliver:* Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Shaheerah Kelly, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 947–4156, *kelly.shaheerah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal
A. What rule did the State submit?
B. Are there other versions of the rule?
C. What is the purpose of the rule?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rule?
B. Does the rule meet the evaluation criteria?
C. Proposed action and public comment
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What rule did the State submit?

On August 8, 2008, Rule 27.1 was adopted into SDAPCD's local rules. On April 29, 2009, the California Air Resources Board (ARB) submitted the rule to EPA to be included in the SDAPCD portion of the California SIP.

On May 7, 2009, the submittal of Rule 27.1 was found to meet the completeness criteria, which must be met before formal EPA review.

B. Are there other versions of the submitted rule?

There are no previous versions of Rule 27.1 in the California SIP.

C. What is the purpose of the rule?

Rule 27.1—Federal Requirements for the San Diego County Air Pollution Control District's Alternative Mobile Source Emission Reduction Program Approved On September 8, 2000, along with District Rule 27—Banking of Mobile Source Emission Reduction Credits, and SDAPCD's Alternative Program,[1] provide the framework to ensure that MERCs created and used under these provisions are real, quantifiable, surplus and permanent for the life of the project. Rule 27.1 includes the provisions necessary to ensure that the permanence of the MERCs are enforceable as a practical and legal matter and Federally enforceable under the SIP. In addition, since Rule 27.1 does not ensure that MERCs generated under the District's Alternative Program are real, quantifiable and surplus, Section (b)(8) of Rule 27.1 requires EPA to make a finding that the MERCs are real, quantifiable, surplus, permanent, and enforceable prior to use. Incorporation of Rule 27.1 will allow NO_x MERCs generated under the District's program to be used as Federal NSR offsets.

EPA's technical support document (TSD) has more information about Rule 27.1.

[1] Alternative Mobile Source Emission Reduction Program for Replacing Medium and Heavy Heavy-Duty Diesel Powered Vehicles and Repowering of Marine Vessels Under Rule 27(c)(1)(vi) as Approved on September 8, 2000.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

Section 173(c) of the Act requires Federal NSR offsets for new and modified stationary sources. Emission reductions used as Federal NSR offsets must be real, quantifiable, surplus, permanent, and enforceable. Our evaluation of Rule 27.1 is limited to determining whether MERCs that are tracked through the rule are permanent and Federally enforceable. Other mechanisms, as discussed in the TSD, have been used to ensure MERCs subject to this rule are real, quantifiable, and surplus.

B. Do the rules meet the evaluation criteria?

We believe the rule contains sufficient mechanisms to ensure that MERCs tracked through the rule are permanent and Federally enforceable. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving Rule 27.1 because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register,** we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by July 6, 2009, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on August 3, 2009. This will incorporate Rule 27.1 into the Federally enforceable California SIP.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 3, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, New source review, Nitrogen oxides, Ozone.

Dated: May 7, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(362)(i)(A)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(362) New and amended regulations were submitted on April 29, 2009 by the Governor's designee.

(i) Incorporation by Reference.

(A) San Diego Air Pollution Control District.

(*1*) Rule 27.1, ''Federal Requirements for the San Diego County Air Pollution Control District's Alternative Mobile Source Emission Reduction Program Approved On September 8, 2000,'' adopted and effective on August 8, 2008.

[FR Doc. E9–12791 Filed 6–2–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0923; FRL–8417–9]

Exemptions from the Requirement of a Tolerance; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical Amendments.

SUMMARY: This document makes minor technical revisions of certain commodity terms listed under 40 CFR part 180, subpart D. EPA is taking this action to establish a uniform listing of commodity terms throughout part 180.

DATES: This regulation is effective June 3, 2009. Objections and requests for hearings must be received on or before August 3, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0923 . All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Stephen Morrill, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8319; fax number: (703) 308–7026; e-mail address: *morrill.stephen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must

identify docket ID number EPA–HQ–OPP–2008–0923 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before August 3, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0923, by one of the following methods:

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

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

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

II. Background

What Action is the Agency Taking?

EPA's Office of Pesticide Programs (OPP) has developed a commodity vocabulary database entitled *Food and Feed Commodity Vocabulary*. The database was developed to consolidate all the major OPP commodity vocabularies into one standardized vocabulary. As a result, all future pesticide tolerances issued under 40 CFR part 180 will use the ''preferred commodity term'' as listed in the aforementioned database. This is the ninth in a series of documents revising the terminology of commodity terms listed under 40 CFR part 180. Eight final rules, revising pesticide tolerance nomenclature, have published in the **Federal Register**: June 19, 2002 (67 FR 41802) (FRL–6835–2); June 21, 2002 (67 FR 42392) (FRL–7180–1); July 1, 2003 (68 FR 39428) (FRL–7308–9) and (68 FR 39435) (FRL–7316–9); December 13, 2006 (71 FR 74802) (FRL–8064–3); September 18, 2007 (72 FR 53134) (FRL–8126–5) corrected on October 31, 2007 (72 FR 61535) (FRL–8151–4); and October 10, 2008, (73 FR 60151) (FRL–8376–1). This revision process will establish a uniform presentation of existing commodity terms under 40 CFR part 180.

In Section	In paragraph	Remove the term	Add in its place the term
180.1011	(b)	beeswax and honey	honey and honeycomb
180.1019	(b)	meat	cattle, meat; goat, meat; hog, meat; horse, meat; sheep, meat;
180.1019	(b)	poultry	poultry, fat; poultry, meat; poultry, meat, byproducts
180.1019	(b)	eggs	egg
180.1020	(a) Commodity list	Bean, dry, edible	Bean, dry, seed
180.1020	(a)	Corn, fodder	Corn, field, stover; Corn, pop, stover;
180.1020	(a)	Corn, forage	Corn, field, forage
180.1020	(a)	Corn, grain	Corn, field, grain; Corn, pop, grain
180.1020	(a)	Cottonseed	Cotton, undelinted, seed
180.1020	(a)	Flaxseed	Flax, seed
180.1020	(a)	Guar beans	Guar, seed
180.1020	(a)	Peas, southern	Cowpea, forage; Cowpea, hay; Cowpea, seed
180.1020	(a)	Peppers, chili	Pepper, chili
180.1020	(a)	Potatoes	Potato
180.1020	(a)	Rice	Rice, grain; Rice straw
180.1020	(a)	Safflower, grain	Safflower, seed
180.1020	(a)	Sorghum, grain	Sorghum, grain, grain
180.1020	(a)	Sorghum, fodder	Sorghum, grain, stover
180.1020	(a)	Soybeans	Grain, aspirated fractions; Soybean, forage; Soybean, hay; Soybean, seed
180.1020	(a)	Sunflower seed	Sunflower, seed

In Section	In paragraph	Remove the term	Add in its place the term
180.1020	(b)	Wheat	Wheat, forage; Wheat, grain; Wheat, hay; Wheat, straw
180.1021	(a)	Meat	Cattle, meat; Goat, meat; Hog, meat; Horse, meat; sheep, meat
180.1021	(a)	Poultry	Poultry, fat; Poultry, meat; Poultry, meat byproducts
180.1021	(a)	Eggs	Egg
180.1022		eggs	egg
180.1022		poultry	poultry, fat; poultry, meat; poultry, meat byproducts
180.1023	(a)	alfalfa	alfalfa, forage; alfalfa, hay; alfalfa, seed
180.1023	(a)	barley grain	barley, grain
180.1023	(a)	Bermuda grass	Bermudagrass, forage; Bermudagrass, hay
180.1023	(a)	bluegrass	bluegrass, forage; bluegrass, hay
180.1023	(a)	brome grass	bromegrass, forage; bromegrass, hay
180.1023	(a)	clover	clover, forage; clover, hay
180.1023	(a)	corn grain	corn, field, grain; corn, pop, grain; corn, sweet, kernel plus cob with husks removed
180.1023	(a)	cowpea hay	cowpea, hay
180.1023	(a)	fescue	fescue, forage; fescue, hay
180.1023	(a)	lespedeza	lespedeza, forage; lespedeza, hay
180.1023	(a)	lupines	lupin
180.1023	(a)	oat grain	oat, grain
180.1023	(a)	orchard grass	orchardgrass, forage; orchardgrass, hay
180.1023	(a)	peanut hay	peanut, hay
180.1023	(a)	peavine hay	pea, field, hay
180.1023	(a)	rye grass	ryegrass, Italian, hay
180.1023	(a)	sorghum grain	sorghum, grain, grain
180.1023	(a)	soybean hay	soybean, hay
180.1023	(a)	sudan grass	sudangrass, forage; sudangrass, hay
180.1023	(a)	timothy	timothy, forage; timothy, hay
180.1023	(a)	vetch	vetch, forage; vetch, hay
180.1023	(a)	wheat grain	wheat, grain
180.1023	(b)	meat and meat byproducts of cattle, sheep, hogs, goats, horses	cattle, meat; cattle, meat byproducts; goat, meat; goat, meat byproducts; hog, meat; hog, meat byproducts; horse, meat; horse, meat byproducts; sheep, meat; sheep, meat byproducts
180.1023	(b)	poultry	poultry, fat; poultry, meat; poultry, meat byproducts

In Section	In paragraph	Remove the term	Add in its place the term
180.1023	(b)	eggs	egg
180.1027	(c)	including corn, cottonseed, beans, lettuce, okra, peppers, sorghum, soybeans, and tomatoes.	[Removed]
180.1035		honey and beeswax	honey and honeycomb
180.1037	(a)	cottonseed	cotton, undelinted, seed
180.1037	(b)	artichokes	artichoke
180.1043		cottonseed	cotton, undelinted, seed
180.1054	(b)	grapes	grape
180.1057		citrus fruit	fruit, citrus
180.1058		alfalfa hay	alfalfa, hay
180.1058		Bermuda grass hay	Bermudagrass, hay
180.1058		blue grass hay	bluegrass, hay
180.1058		brome grass hay	bromegrass, hay
180.1058		clover hay	clover, hay
180.1058		corn grain	corn, field, grain; corn, pop, grain
180.1058		oat grain	oat, grain
180.1058		orchard grass hay	orchardgrass, hay
180.1058		sorghum grain	sorghum, grain, grain
180.1058		sudan grass hay	sudangrass, hay
180.1058		rye grass hay	ryegrass, Italian, hay
180.1058		timothy hay	timothy, hay
180.1070		crop group Brassica (cole) leafy vegetables	Vegetable, brassica, leafy, group 5
180.1070		radishes	radish, roots; radish, tops
180.1073		peaches	peach
180.1073		quinces	quince
180.1073		nectarines	nectarine
180.1073		macadamina nuts	nut, macadamia
180.1075		Rice grain	Rice, grain
180.1075		Soybeans	Soybean, seed; Soybean, forage; Soybean, hay; Grain, aspirated fractions
180.1076	(b)	pasture and rangeland forage	grass, pasture, forage; grass, rangeland, forage
180.1083	(a) and (b)	Peas	Pea, dry, seed; Pea, succulent
180.1087		almond	almond; almond, hulls
180.1087		cotton	cotton, undelinted seed; cotton, gin byproducts
180.1087		soybeans	soybean, seed; soybean, forage; soybean, hay; grain, aspirated fractions

In Section	In paragraph	Remove the term	Add in its place the term
180.1087		potatoes	potato
180.1087		sugarbeets	beet, sugar, roots; beet, sugar, tops
180.1087		tomatoes	tomato
180.1087		bell peppers	pepper, bell
180.1087		strawberries	strawberry
180.1087		eggplants	eggplant
180.1087		cucumbers	cucumber
180.1087		carrots	carrot, roots
180.1087		radish	radish, roots; radish, tops
180.1087		turnips	turnip, roots; turnip, tops
180.1087		onions	onion
180.1087		peas	pea, dry, seed; pea, succulent
180.1087		melons	melon
180.1087		grapes	grape
180.1087		walnuts	walnut
180.1092		beeswax and honey	honey and honeycomb
180.1097		grapes	grape
180.1103		RACs	raw agicultural commodities
180.1113		grasses, forage and hay	grass, forage; grass, hay
180.1113		rice, grain and straw	rice, grain; rice, straw
180.1113		soybeans	Grain, aspirated fractions; soybean, seed
180.1113		soybean, forage and hay	soybean, forage; soybean, hay
180.1113		wild rice	rice, wild grain
180.1178		honey and beeswax	honey and honeycomb
180.1196	(a)	raw agricultural commodities, in processed commodities	all food commodities
180.1196	(b)	all raw and processed food commodities	all food commodities
180.1206	(a)	cotton and its food/feed commodities	cotton, gin byproducts; cotton, hulls; cotton, meal; cotton, refined oil; cotton, undelinted seed
180.1206	(c)	on corn	in or on grain, aspirated fractions; corn, field, forage: corn, field flour; corn, field, grain; corn, field, grits; corn, field, starch; corn, field, stover; corn, pop, grain; corn, pop, stover; corn, sweet, forage; corn, sweet, kernel plus cob with husks removed; corn, sweet, stover
180.1219		corn, sweet (K+CWHR)	corn, sweet, kernel plus cob with husks removed
180.1254		on peanut and its food/feed commodities	In or on peanut; peanut hay; peanut, meal; peanut, refined oil
180.1258		alfalfa	Alfalfa, seed; alfalfa, hay

In Section	In paragraph	Remove the term	Add in its place the term
180.1258		barley grain	barley, grain
180.1258		Bermuda grass;	bermudagrass, hay
180.1258		bluegrass	bluegrass, hay
180.1258		brome grass	bromegrass, hay
180.1258		clover	clover, hay
180.1258		corn grain	corn, field, grain; corn, pop, grain
180.1258		cowpea hay	cowpea, hay
180.1258		fescue hay	fescue, hay
180.1258		lespedeza	lespedeza, hay
180.1258		lupines	lupin
180.1258		oat grain	oat, grain
180.1258		orchard grass	orchardgrass, hay
180.1258		peanut grass	peanut, hay
180.1258		Timothy	timothy, hay
180.1258		vetch	vetch, hay
180.1258		wheat grain	wheat, grain
180.1261		tomatoes and peppers	pepper and tomato
180.1274		wheat and barley	grain, aspirated fractions; barley, grain: barley, hay; barley, straw; wheat, grain; wheat, forage; wheat, hay; wheat, straw
180.1276		grass and grass hay	grass, forage; grass, hay
180.1279		cucurbits	cucurbit

III. Statutory and Executive Order Reviews

This document makes technical amendments to the Code of Federal Regulations which have no substantive impact on the underlying regulations, and does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical amendment is not a ''significant regulatory action'' subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental organizations. After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. These technical amendments to the Code of Federal Regulations have no substantive impact on the underyling regulations. These technical amendments will not have any negative economic impact on any entities, including small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

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

IV. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 21, 2009.

W. Michael McDavit,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In §180.1011, by revising paragraph (b) to read as follows:

§ 180.1011 Viable spores of the microorganism Bacillus thuringiensis Berliner; exemption from the requirement of a tolerance.

* * * * *

(b) Exemption from the requirement of a tolerance is established for residues of the microbial insecticide *Bacillus thuringiensis* Berliner, as specified in paragraph (a) of this section, in or on honey and honeycomb and all other raw agricultural commodities when it is applied either to growing crops, or when it is applied after harvest in accordance with good agricultural practices.

* * * * *

■ 3. In § 180.1019, by revising paragraph (b) to read as follows:

§ 180.1019 Sulfuric acid; exemption from the requirement of a tolerance.

* * * * *

(b) Residues of sulfuric acid are exempted from the requirement of a tolerance in cattle, meat; goat, meat; hog, meat; horse, meat; sheep, meat; poultry, fat; poultry, meat; poultry, meat, byproducts; egg; milk; fish, shellfish, and irrigated crops when it results from the use of sulfuric acid as an inert ingredient in a pesticide product used in irrigation conveyance systems and lakes, ponds, reservoirs, or bodies of water in which fish or shellfish are cultivated. The sulfuric acid is not to exceed 10% of the pesticide formulation (non-aerosol formulations only).

* * * * *

■ In § 180.1020, by revising the Commodity list in paragraph (a) and the table in paragraph (b) to read as follows:

§ 180.1020 Sodium chlorate; exemption from the requirement of a tolerance.

(a) * * *

Commodity

Bean, dry, seed
Corn, field, forage
Corn, field, grain
Corn, field, stover
Corn, pop, grain
Corn, pop, stover
Cotton, undelinted seed
Cowpea, forage
Cowpea, hay
Cowpea, seed
Flax, seed
Flax, straw
Grain, aspirated fractions
Guar, seed
Pepper, chili
Potato
Rice, grain
Rice, straw
Safflower, seed
Sorghum, forage
Sorghum, grain, grain
Sorghum, grain, stover
Soybean, forage
Soybean, hay
Soybean, seed
Sunflower, seed

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
Wheat, forage	NA	12/31/06
Wheat, grain	NA	12/31/06
Wheat, hay	NA	12/31/06
Wheat, straw	NA	12/31/06

■ 5. In §180.1021, by revising paragraph (a) introductory text to read as follows:

§ 180.1021 Copper; exemption from the requirement of a tolerance.

(a) Copper is exempted from the requirement of a tolerance in cattle, meat; goat, meat; hog, meat; horse, meat; sheep, meat; milk, poultry, fat; poultry, meat; poultry, meat byproducts; egg, fish, shellfish, and irrigated crops when it results from the use of:

* * * * *

■ 6. Section 180.1022 is revised to read as follows:

§ 180.1022 Iodine-detergent complex; exemption from the requirement of a tolerance.

The aqueous solution of hydriodic acid and elemental iodine, including one or both of the surfactants (a) polyoxypropylene-polyoxyethylene glycol nomionic block polymers (minimum average molecular weight 1,900) and (b) α-(p- nonylphenyl)-*omega*- hydroxypoly (oxyethylene) having a maximum average molecular weight of 748 and in which the nonyl group is a propylene trimer isomer, is exempted from the requirement of a tolerance for residues in egg, and poultry, fat; poultry, meat; poultry, meat byproducts when used as a sanitizer in poultry drinking water.

* * * * *

■ 7. In § 180.1023, by revising paragraphs (a) and (b) to read as follows:

§ 180.1023 Propanoic acid; exemptions from the requirement of a tolerance.

(a) Postharvest application of propanoic acid or a mixture of methylene bispropionate and oxy(bismethylene) bisproprionate when used as a fungicide is exempted from the requirement of a tolerance for residues in or on the following raw agricultural commodities: Alfalfa, forage; alfalfa, hay; alfalfa, seed; barley, grain; Bermudagrass, forage; Bermudagrass, hay; bluegrass, forage; bluegrass, hay; bromegrass, forage; bromegrass, hay; clover, forage; clover, hay; corn, field, grain; corn, pop, grain; cowpea, hay; fescue, forage; fescue, hay; lespedeza, forage; lespedeza, hay; lupin; oat, grain; orchardgrass, forage; orchardgrass, hay; peanut, hay; pea, field, hay; ryegrass, Italian, hay; sorghum, grain, grain; soybean, hay; sudangrass, forage; sudangrass, hay; timothy, forage; timothy, hay; vetch, forage; vetch, hay; and wheat, grain.

(b) Propanoic acid is exempt from the requirement of a tolerance for residues in or on cattle, meat; cattle, meat byproducts; goat, meat; goat, meat byproducts; hog, meat; hog meat byproducts; horse, meat; horse, meat byproducts; sheep, meat; sheep meat byproducts; and, poultry, fat; poultry meat; poultry meat byproducts; milk, and egg when applied as a bactericide/fungicide to livestock drinking water, poultry litter, and storage areas for silage and grain.

* * * * *

■ 8. In § 180.1027, by revising paragraph (c) to read as follows:

§ 180.1027 Nuclear polyhedrosis virus of Heliothis zea; exemption from the requirement of a tolerance.

* * * * *

(c) Exemptions from the requirement of a tolerance are established for the residues of the microbial insecticide *Heliothis zea* NPV, as specified in paragraphs (a) and (b) of this section, in or on all agricultural commodities.

■ 9. Section 180.1035 is revised to read as follows:

§ 180.1035 Pine oil; exemption from the requirement of a tolerance.

Pine oil is exempted from the requirement of a tolerance for residues in the raw agricultural commodities honey and honeycomb, when present therein as a result of its use as a deodorant at no more than 12 percent in formulation with the bee repellent butanoic anhydride applied in an absorbent pad over the hive.

■ 10. Section 180.1037 is revised to read as follows:

§ 180.1037 Polybutenes; exemption from the requirement of a tolerance.

(a) Polybutenes are exempt from the requirement of a tolerance for residues in or on the raw agricultural commodity cotton, undelinted seed when used as a sticker agent for formulations of the attractant gossyplure (1:1 mixture of (*Z,Z*)- and (*Z,E*)-7,11-hexadecadien-1-ol acetate) to disrupt the mating of the pink bollworm.

(b) Polybutenes are exempt from the requirement of a tolerance for residues in or on the raw agricultural commodity artichoke when used as a sticker agent in multi-layered laminted controlled-release dispensers of (Z)-11-hexaadecenal to disrupt the mating of the artichoke plume moth.

■ 11. Section 180.1043 is revised to read as follows:

§ 180.1043 Gossyplure; exemption from the requirement of a tolerance.

The pheromone gossyplure, a 1:1 mixture of (*Z,Z*)- and (*Z,E*)-7,11-hexadecadien-1-ol acetate) is exempt from the requirement of a tolerance in or on the raw agricultural commodity cotton, undelinted seed when applied to cotton from capillary fibers.

■ 12. In § 180.1054, by revising paragraph (b) to read as follows:

§ 180.1054 Calcium hypochlorite; exemptions from the requirement of a tolerance.

* * * * *

(b) Calcium hypochlorite is exempted from the requirement of a tolerance in or on grape when used as a fumigant postharvest by means of a chlorine generator pad.

■ 13. Section 180.1057 is revised to read as follows:

§ 180.1057 Phytophthora palmivora; exemption from requirement of tolerance.

Phytophthora palmivora is exempted from the requirement of a tolerance in or on the raw agricultural commodity fruit, citrus.

■ 14. Section 180.1058 is revised to read as follows:

§ 180.1058 Sodium diacetate; exemption from the requirement of a tolerance.

Sodium diacetate, when used postharvest as a fungicide, is exempt from the requirement of a tolerance for residues in or on alfalfa, hay; Bermudagrass, hay; bluegrass, hay; bromegrass, hay; clover,hay; corm, field, grain; corn, pop, grain; oat, grain; orchardgrass, hay; sorghum, grain, grain; sudangrass, hay; ryegrass, Italian, hay; timothy, hay.

■ 15. Section 180.1070 is revised to read as follows:

§ 180.1070 Sodium chlorite; exemption from the requirement of a tolerance.

Sodium chlorite is exempted from the requirement of a tolerance for residues when used in accordance with good agricultural practice as a seed-soak treatment in the growing of the raw agricultural commodities vegetable, brassica, leafy, group 5 and radish, roots and radish, tops.

■ 16. Section 180.1073 is revised to read as follows:

§ 180.1073 Isomate-M; exemption from the requirement of a tolerance.

The oriental fruit moth pheromone (Isomate-M) (Z-8-dodecen-l-yl acetate, E-8-dodecen-l-yl acetate, Z-8-dodecen-l-ol) is exempt from the requirement of a tolerance in or on all the raw agricultural commodities (food and feed) including, peach; quince; nectarine; and nut, macadamia when used in orchards with encapsulated polyethylene tubing to control oriental fruit moth.

■ 17. In § 180.1075, by revising the Commodity list to read as follows:

§ 180.1075 Colletotrichum gloeosporioides f. sp. aeschynomene; exemption from the requirement of a tolerance.

* * * * *

Commodity

Aspirated grain fractions
Rice, grain
Soybean, forage
Soybean, hay
Soybean, seed

■ 18. In § 180.1076, by revising paragraph (b) to read as follows:

§ 180.1076 Viable spores of the microorganism Bacillus popilliae; exemption from the requirement of a tolerance.

* * * * *

(b) Exemption from the requirement of a tolerance is established for residues of the microbial insecticide *Bacillus popilliae*, as specified in paragraph (a) of this section in or on grass, pasture, forage and grass, rangeland, forage when it is applied to growing crops in accordance with good agricultural practices.

■ 19. In § 180.1083, by revising paragraphs (a) and (b) to read as follows:

§ 180.1083 Dimethyl sulfoxide; exemption from the requirement of a tolerance.

* * * * *

(a) Carbaryl (1-naphthyl methyl-carbamate)

Pea, dry, seed
Pea, succulent

(b) *O-O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate

Pea, dry, seed
Pea, succulent

■ 20. Section 180.1087 is revised to read as follows:

§ 180.1087 Sesame stalks; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the biorational nematicide sesame stalk in or on the following raw agricultural commodities: Almond; almond, hulls; cotton, undelinted seed; cotton, gin byproducts; soybean, seed; soybean, forage; soybean, hay; aspirated grain fractions; potato; beet, sugar, roots; beet, sugar, tops; tomato; pepper, bell; squash; strawberry; eggplant; cucumber; carrot, roots; radish, roots; radish, top; turnip, roots; turnip, tops; onion; pea, dry; pea, succulent; melon; grape; walnut; orange; grapefruit; mulberry; peach; apple; apricot; blackberry; loganberry; pecan; cherry; plum, and cranberry.

■ 21. Section 180.1092 is revised to read as follows:

§ 180.1092 Menthol; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the pesticidal chemical menthol in or on honey and honeycomb when used in accordance with good agricultural practice in over-wintering bee hives.

■ 22. Section 180.1097 is revised to read as follows:

§ 180.1097 GBM-ROPE; exemption from the requirement of a tolerance.

The grape berry moth pheromone (GBM-ROPE) containing the active ingredients (Z)-9-dedecenyl acetate and (Z)-11-tetradecenyl acetate is exempt from the requirement of a tolerance in or on the raw agricultural commodity grape when used in orchards with encapsulated polyethylene tubing to control grape berry moth.

■ 23. Section 180.1103 is revised to read as follows:

§ 180.1103 Isomate-C; exemption from the requirement of a tolerance.

The codling moth pheromone (Isomate-C) E,E-8,10-dodecenyl alcohol, dodecanol, tetradecanol is exempt from the requirements of a tolerance in or on all raw agricultural commodities when formulated in polyethylene pheromone dispensers for use in orchards with encapsulated polyethylene tubing to control codling moth.

■ 24. Section 180.1113 is revised to read as follows:

§ 180.1113 Lagenidium giganteum; exemption from the requirement of a tolerance.

Lagenidium giganteum (a fungal organism) is exempt from the requirement of a tolerance in or on the raw agricultural commodities aspirated grain fractions; grass, forage; grass, hay; rice, grain; rice, straw; soybean, seed; soybean, forage; soybean, hay; rice, wild, grain.

■ 25. Section 180.1178 is revised to read as follows:

§ 180.1178 Formic acid; exemption from the requirement of a tolerance.

The pesticide formic acid is exempted from the requirement of a tolerance in or on honey and honeycomb when used to control tracheal mites and suppress varroa mites in bee colonies, and applied in accordance with label use directions.

■ 26. Section 180.1196 is revised to read as follows:

§ 180.1196 Peroxyacetic acid; exemption from the requirement of a tolerance.

(a) An exemption from the requirement of a tolerance is established for residues of peroxyacetic acid in or on all food commodities, when such residues result from the use of peroxyacetic acid as an antimicrobial treatment in solutions containing a diluted end use concentration of peroxyacetic acid up to 100 ppm per application on fruits, vegetables, tree nuts, cereal grains, herbs, and spices.

(b) An exemption from the requirement of a tolerance is established for residues of peroxyacetic acid, in or on all food commodities when used in sanitizing solutions containing a diluted end-use concentration of peroxyacetic acid up to 500 ppm, and applied to tableware, utensils, dishes, pipelines, tanks, vats, fillers, evaporators, pasteurizers, aseptic equipment, milking equipment, and other food processing equipment in food handling establishments including, but not limited to dairies, dairy barns, restaurants, food service operations, breweries, wineries, and beverage and food processing plants.

■ 27. In § 180.1206, by revising paragraphs (a) and (c) to read as follows:

§ 180.1206 Aspergillus flavus AF36; exemption from the requirement of a tolerance.

(a) An exemption from the requirement of a tolerance is established for residues of the microbial pesticide *Aspergillus flavus* AF36 in or on cotton, gin byproducts; cotton, hulls; cotton, meal; cotton, refined oil; cotton, undelinted seed.

* * * * *

(c) *Aspergillus flavis* AF 36 is temporarily exempt from the requirement of a tolerance on corn, field, forage; corn, field, grain; corn, field, stover; corn, pop, grain; corn, pop, stover; corn, sweet, forage; corn, sweet, kernel plus cob with husks removed; corn, sweet, stover when used in accordance with the Experimental Use Permit 71693–EUP–2. This temporary exemption from the tolerance will expire December 31, 2011.

■ 28. Section 180.1219 is revised to read as follows:

§ 180.1219 Foramsulfuron; exemption from the requirement of a tolerance.

The pesticide foramsulfuron is exempted from the requirement of a tolerance in corn, field, grain/corn, field, forage/ corn, field, stover/corn, pop, grain/corn, pop, forage/corn, pop, stover; corn, sweet, forage; corn, sweet, kernel plus cob with husks removed; corn, sweet, stover when applied as a herbicide in accordance with good agricultural practices.

■ 29. Section 180.1254 is revised to read as follows:

§ 180.1254 Aspergillus flavus NRRL 21882 on peanut; exemption from requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Aspergillus flavus* NRRL 21882 in or on peanut; peanut hay; peanut, meal; peanut, refined oil.

■ 30. Section 180.1258 is revised to read as follows:

§ 180.1258 Acetic acid; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the biochemical pesticide acetic acid when used as a preservative on post-harvest agricultural commodities intended for animal feed, including Alfalfa, seed; alfalfa, hay; barley, grain; bermudagrass, hay; bluegrass, hay; bromegrass, hay; clover, hay; corn, field, grain; corn, pop, grain; cowpea, hay; fescue, hay; lespedeza, hay; lupin; oat, grain; orchardgrass, hay; peanut, hay; timothy, hay; vetch, hay; and wheat, grain, or commodities described as grain or hay.

■ 31. Section 180.1261 is revised to read as follows:

§ 180.1261 Xanthomonas campestris pv. vesicatoria and Pseudomonas syringae pv. tomato specific Bacteriophages.

An exemption from the requirement of a tolerance is established for residues of *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages in or on pepper and tomato.

■ 32. In § 180.1274, by revising the introductory text to read as follows:

§ 180.1274 Tris (2-ethylhexyl) phosphate; exemption from the requirement of a tolerance.

Tris (2-ethylhexyl) phosphate (TEHP, CAS Reg. No. 78–42–2) is exempt from the requirement of a tolerance for residues in grain, aspirated fractions; barley, grain, barley, hay, barley, straw; wheat, grain; wheat, forage; wheat, hay; wheat, straw when used under the following conditions:

■ 33. Section 180.1276 is revised to read as follows:

§ 180.1276 Tobacco mild green mosaic tobamovirus (TMGMV); temporary exemption from the requirement of a tolerance.

A temporary exemption from the requirement of a tolerance is established for residues of tobacco mild green mosaic tobamovirus in or on all grass, forage and grass, hay.

■ 34. Section 180.1279 is revised to read as follows:

§ 180.1279 Zucchini yellow mosaic virus—weak strain; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance for residues of the ZYMV–WK strain in or on all raw cucurbit when applied/used in accordance with label directions.

[FR Doc. E9–12694 Filed 6–2–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0312; FRL–8414–6]

Triflumizole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of triflumizole and its metabolites containing the 4-chloro-2-trifluoromethylaniline (FA-1-1) moiety, calculated as the parent compound, in or on leafy greens subgroup 4A, except spinach; Brassica, head and stem, subgroup 5A; Brassica, leafy greens, subgroup 5B; cilantro leaves; Swiss chard; pineapple; papaya; black sapote; canistel; mamey sapote; mango; sapodilla; star apple; hops, dried cones; and turnip greens. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). This regulation also deletes the following time-limited tolerances, as permanent tolerances supersede them: Collards, kale and mustard greens, as residues on these commodities will be covered by the Brassica, leafy greens, subgroup 5B tolerance; broccoli, since residues will be covered by the Brassica, head and stem, subgroup 5A tolerance; dandelion leaves and parsley leaves, since residues will be covered by the leafy greens subgroup 4A tolerance; Swiss chard and turnip greens, as the time-limited tolerances will be superseded by permanent tolerances; and coriander leaves, as the cilantro leaves tolerance supersedes it and is the preferred commodity definition.

DATES: This regulation is effective June 3, 2009. Objections and requests for hearings must be received on or before August 3, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0312. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; e-mail address: *nollen.laura@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0312 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before August 3, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0312, by one of the following methods:

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

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

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

II. Petitions for Tolerance

In the **Federal Register** of June 27, 2007 (72 FR 35237) (FRL–8133–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E7183) by IR-4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.476 be amended by establishing a tolerance for combined residues of the fungicide triflumizole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1 *H*-imidazole, and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, in or on Brassica, leafy greens, subgroup 5B at 20.0 parts per million (ppm). That notice referenced a summary of the petition prepared on behalf of IR-4 by Chemtura USA Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

In the **Federal Register** of February 6, 2008 (73 FR 6964) (FRL–8350–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 7E7258 and 7E7286) by IR-4. The petition requested that 40 CFR 180.476 be amended by establishing tolerances for combined residues of the fungicide triflumizole, and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, in or on food commodities for PP 7E7258: Leafy greens subgroup 4A, except spinach, at 35 ppm; cilantro, leaves at 35 ppm; Swiss chard at 18 ppm; pineapple at 4.0 ppm; papaya at 2.5 ppm; sapote, black at 2.5 ppm; canistel at 2.5 ppm; sapote, mamey at 2.5 ppm; mango at 2.5 ppm; sapodilla at 2.5 ppm; star apple at 2.5 ppm; and hop, dried cones at 50.0 ppm; and for PP 7E7286: Brassica, head and stem, subgroup 5A at 5.0 ppm. That notice referenced a summary of the petition prepared on behalf of IR-4 by Chemtura USA Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to this notice of filing.

In the **Federal Register** of May 16, 2008 (73 FR 28461) (FRL–8361–6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the amendment of pesticide petition (PP 7E7258) by IR-4. The petition requested that 40 CFR 180.476 be amended by additionally establishing a tolerance for combined residues of the fungicide triflumizole, and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, in or on the food commodity turnip, greens at 40 ppm. That notice referenced a summary of the petition prepared on behalf of IR-4 by Chemtura USA Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to this notice of filing.

Based upon review of the data supporting these petitions, EPA has determined that some of the proposed tolerance levels should be increased and has also revised the tolerance expression. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for combined residues of triflumizole, and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, on leafy greens subgroup 4A, except spinach at 35 parts per million (ppm); Brassica, head and stem, subgroup 5A at 8.0 ppm; Brassica, leafy greens, subgroup 5B at 40.0 ppm; cilantro

leaves at 35 ppm; Swiss chard at 18 ppm; pineapple at 4.0 ppm; papaya at 2.5 ppm; black sapote at 2.5 ppm; canistel at 2.5 ppm; mamey sapote at 2.5 ppm; mango at 2.5 ppm; sapodilla at 2.5 ppm; star apple at 2.5 ppm; hop, dried cones at 50.0 ppm; and turnip greens at 40 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

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

Triflumizole has low acute toxicity via the oral, dermal, and inhalation routes. It is a mild eye irritant and dermal sensitizer, but is not a dermal irritant. The primary target organ affected by triflumizole is the liver. Liver effects were seen in rat and mouse subchronic and chronic/carcinogenicity studies. Subchronic effects included increased absolute and relative liver weights, accumulation of fat droplets, and slight hepatocyte centrilobular swelling. With increased length of exposure, the types of microscopic lesions noted increased in number and severity. Chronic effects included hepatocyte fatty vacuolization; hepatocyte hypertrophy, focal inflammation, and necrosis; fatty degeneration; eosinophilic foci of hepatocyte alteration; hepatic nodules; bile duct hyperplasia; and hyaline degeneration/fibrosis of the bile duct. The dog was less sensitive to the effects of triflumizole. In the dog chronic study, effects included increased liver weights, increased serum alkaline phosphatase levels, and a macroscopic hepatic lobular pattern and granular texture. A very mild, macrocytic anemia was also noted and was most likely secondary to liver effects.

A special microsomal enzyme induction study showed that triflumizole can induce hepatic microsomal enzymes when administered orally at high doses. Kidney weights were increased in the rat and mouse also, but the only pathology seen microscopically was in the rat chronic/carcinogenicity study in which cortical cysts were noted. Other organ effects were observed microscopically at the highest dose tested (HDT) in the chronic rat study, which mainly involved cystic or hyperplastic lesions in endocrine glands and/or lymph nodes. Body weight decrements were noted in the rat and/or mouse subchronic, chronic and carcinogenicity studies and the developmental and reproduction studies.

Long-term dietary administration of triflumizole did not result in an overall treatment-related increase in incidence of tumor formation in rats or mice. Based upon the lack of evidence of carcinogenicity in rats and mice, EPA classified triflumizole as ''not likely to be carcinogenic to humans'' by all routes of exposure. Further, triflumizole did not show evidence of mutagenicity in *in vitro* or *in vivo* studies.

Signs of neurotoxicity were seen in the acute oral toxicity studies in the rat and mouse and an acute inhalation study in the rat. Neurotoxic signs were also observed in the acute neurotoxicity study based on functional-observational-battery (FOB) findings (neuromuscular impairment) and decreased locomotor activity. By day 8 of the observation period treated males and females were comparable to the controls. Although there was a statistically significant increase in hindlimb splay of low-dose females, this effect does not appear to be of great toxicological significance, since no other FOB effects were observed in low-dose females. No evidence of neurotoxicity was seen in the rat subchronic oral toxicity study or the mouse subchronic oral toxicity and carcinogenicity studies.

In oral rat developmental studies, fetal effects (decreased numbers of viable fetuses, increased dead or resorbed fetuses, increased numbers of late resorptions, decreased fetal body weight and increased incidences of cervical ribs) were seen at the same doses where less severe maternal effects were noted (decreases in body weight gain and food consumption and increases in placental, spleen and liver weights). Fetal effects in the rabbit developmental study (decreased 24–hour survival, increased fetal and litter incidences of lumbar ribs and decreased placental weights) were noted at the same dose as maternal toxic effects (decreased food consumption, and decreased placental weights). In a multi-generation study in rats, offspring effects included decreased pup weights, survival indices, and litter sizes in both F3 litters, reduced litter size in the F1a litter, increased total-litter mortality in the F3a litter, and developmental effects in the F1b and F2b progeny. Reproductive toxicity, manifested as increased gestation length, was increased at the high dose.

Specific information on the studies received and the nature of the adverse effects caused by triflumizole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Triflumizole: Second Amended Human Health Risk Assessment for Proposed Uses on Leafy Greens (Subgroup 4A) Except Spinach, Head and Stem Brassica (Subgroup 5A), Cilantro, Swiss Chard, Pineapple, Papaya, Black Sapote, Canistel, Mamey Sapote, Mango, Sapodilla, Star Apple, and Hops'' pages 51–55 in docket ID number EPA–HQ–OPP–2007–0312.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment

process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

EPA identified an acute effect for the general population (neuromuscular impairment and decreased locomotor activity seen in the rat acute neurotoxicity study) and for females 13 to 49 years old (decreased numbers of viable fetuses, increased dead or resorbed fetuses, increased numbers of late resorptions, decreased fetal body weight, and increased incidence of cervical ribs in the rat developmental toxicity study that are presumed to occur after a single exposure). The aPAD for the general population has been established at 0.25 milligrams/kilogram/day (mg/kg/day); whereas, the aPAD for females 13 to 49 years old is lower (0.1 mg/kg/day) due to the more sensitive endpoint on which it is based.

In previous risk assessments for triflumizole, the chronic reference dose (cRfD) for the general population was derived from the NOAEL of 1.5 mg/kg/day from the multi-generation rat reproduction study. However, the Registrant requested that the Agency consider historical control data in relation to the rat reproductive study. Based on evaluation of the historical control data it was determined that the NOAEL should be 3.5 mg/kg/day (previously classified as the LOAEL). The NOAEL of 3.5 mg/kg/day was based on decreased pup body weight, mortality, reduced litter size and increased incidence of hydroureter and space between the body wall and organs observed at 8.5 mg/kg/day (NOAEL= 3.5 mg/kg/day). In addition, gestation length was increased in the dams of F1a, F2a, and F3a intervals at the LOAEL of 8.5 mg/kg/day (NOAEL = 3.5 mg/kg/day).

Based on a re-evaluation of the toxicity database, it was determined that the most suitable endpoint for the derivation of a cRfD was a LOAEL of 3.5 mg/kg/day (a NOAEL was not determined) identified in a chronic rat study and based on liver toxicity. The revised NOAEL of 3.5 mg/kg/day in the rat reproduction study would not be protective of potential liver toxicity associated with triflumizole. It was determined that the LOAEL of 3.5 mg/kg/day from the Combined Chronic Toxicity/Carcinogenicity (based on liver effects) was protective with an additional safety factor.

A summary of the toxicological endpoints for triflumizole used for human risk assessment can be found at *http://www.regulations.gov* in document ''Triflumizole: Second Amended Human Health Risk Assessment for Proposed Uses on Leafy Greens (Subgroup 4A) Except Spinach, Head and Stem Brassica (Subgroup 5A), Cilantro, Swiss Chard, Pineapple, Papaya, Black Sapote, Canistel, Mamey Sapote, Mango, Sapodilla, Star Apple, and Hops'' pages 30-32 in docket ID number EPA–HQ–OPP–2007–0312.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to triflumizole, EPA considered exposure under the petitioned-for tolerances as well as all existing triflumizole tolerances in 40 CFR 180.476. EPA assessed dietary exposures from triflumizole in food as follows:

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

In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance level residues and 100 percent crop treated (PCT) for all existing and new uses of triflumizole.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA used average field trial residues as anticipated residues (ARs) for apple, grape, pear, cherry, cucurbit, strawberry, leafy greens (subgroup 4A) except spinach, head and stem Brassica (subgroup 5A), cilantro, Swiss chard, pineapple, papaya, black sapote, canistel, mamey sapote, mango, sapodilla, star apple and hops. For all other commodities, the assessment used tolerance level residues. The EPA used PCT information for apples, cantaloupes, cherries, cucumbers, grapes, hazelnuts (filberts), honeydew melons, pears, pumpkins, squash, strawberries and watermelons. 100 PCT information was used for the remaining registered and proposed uses.

iii. *Cancer*. Based on absence of significant tumor increases in two rodent carcinogenicity studies, EPA has classified triflumizole as ''not likely to be carcinogenic to humans;'' therefore, a quantitative exposure assessment to evaluate cancer risk is unnecessary.

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

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

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information for chronic assessments as follows:

Apples 20%; Cantaloupe 10%; Cherries 15%; Cucumbers 5%; Grapes 5%; Hazelnuts (Filberts) 15%; Honeydew melons 15%; Pears 40%; Pumpkin 5%; Squash 1%; Strawberry 15%; and Watermelon 5%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The

maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which triflumizole may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for triflumizole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of triflumizole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) for surface water and Screening Concentration in Ground Water (SCI-GROW) models for ground water, the estimated drinking water concentrations (EDWCs) of triflumizole and its metabolites containing the 4-chloro-2-trifluoromethyl aniline moiety for surface water are estimated to be 37.4 parts per billion (ppb) for acute exposures; 15.8 ppb for chronic exposures for non-cancer assessments. For ground water, the EDWCs for all of the above exposure scenarios are estimated to be 3.11 ppb.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 37 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 16 ppb was used to assess the contribution to drinking water.

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

Triflumizole is currently registered for use on ornamental plants including trees, shrubs and vines in residential areas. Since residential applications of triflumizole are to be made by commercial applicators, residential handler exposures are not expected to occur. In addition, post-application exposures of adults and children from this use have been determined to be negligible. Therefore, a residential exposure assessment is not necessary for triflumizole and was not conducted.

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

EPA has not found triflumizole to share a common mechanism of toxicity with any other substances, and triflumizole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that triflumizole does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicity database for triflumizole includes prenatal developmental toxicity studies in rats and rabbits and a multi-generation reproduction toxicity study in rats. There is no evidence of increased quantitative or qualitative susceptibility of rabbit fetuses following *in utero* exposure to triflumizole. Although 24–hour fetal survival was reduced in this study, 24–hour fetal survival is more an indicator of fetal endurance after being removed from the womb rather than a measurement of treatment-related effects on fetal viability and, thus, is not appropriate to use to ascertain fetal susceptibility. In the multi-generation rat reproduction study, reproductive toxicity (increased gestation length and increased vaginal bleeding and dystocias) was increased at the high dose. However, these effects may be a result of endocrine effects on the reproductive system. Comparison of offspring toxicity to reproductive toxicity is more appropriate to evaluate susceptibility because the increased gestation length in the dams is a true parental effect and may affect the dam or the offspring; therefore, there is no increased susceptibility of offspring following prenatal and postnatal exposure in the rat reproduction study.

There was evidence of increased qualitative susceptibility following *in utero* exposure of rats in a developmental study. Developmental toxicity resulted in decreased pup viability, increased dead or resorbed fetuses and an increased incidence of cervical ribs at doses that resulted in less severe maternal toxicity (decreases in body weight gain and food consumption and increases in placental, spleen and liver weights). There are no residual uncertainties for developmental toxicity, and the use of the developmental NOAEL and the endpoint for the acute reference dose (aRfD) for females 13-49 is considered protective of the prenatal toxicity following an acute dietary exposure.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 3X for all repeated exposure scenarios and 1X for single

exposure scenarios. That decision is based on the following findings.

i. The toxicity database for triflumizole is complete except for immunotoxicity testing. Recent changes to 40 CFR part 158 make immunotoxicity testing (OPPTS Guideline 870.7800) required for pesticide registration; however, the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios, and for evaluation of the requirements under the FQPA. In the toxicity database for triflumizole, there was some indication of possible immunotoxicity in the form of non-neoplastic lesions, characterized as dilated cyctic sinuses in the thymic lymph node following dietary administration for 2 years. However, these lesions were seen only in male rats at the HDT and only at the termination of the study. This indicates that these lesions are non-specific, are due to the age of the rats, and thus are not attributable to frank immunotoxicity. There were no other corroborative changes, such as changes in the thymus weights, in this study or in the thymus and spleen in the other studies (i.e., subchronic and chronic studies in dogs). Moreover, triflumizole belongs to the imidazole class of compounds, which are not known to be immunotoxicants. Based on the considerations in this unit, the Agency does not believe that conducting the immunotoxicity study will result in a dose less than the point of departure already used in this risk assessment and an additional database uncertainty factor for potential immunotoxicity does not need to be applied.

ii. There is no need for a developmental neurotoxicity (DNT) study or additional UFs to account for neurotoxicity based on the following considerations:

Signs of neurotoxicity were observed in the acute neurotoxicity study based on FOB findings (neuromuscular impairment) and decreased locomotor activity. By day 8 of the observation period treated males and females were comparable to the controls. Although there was a statistically significant increase in hindlimb splay of low-dose females, this effect does not appear to be of great toxicological significance, as no other FOB effects were observed in low-dose females. In a combined subchronic oral toxicity/subchronic neurotoxicity study there was no evidence of neurotoxicity at any dose tested. Further, there were no signs of neurotoxicity and no indications of increased susceptibility of *in utero* rats or rabbits or offspring in the developmental and reproduction studies for triflumizole. There was evidence of qualitative toxicity in the rat developmental toxicity study, but only at doses that were maternally toxic. The evidence does not support the need for a developmental neurotoxicity study. This conclusion is supported by:

• No neurotoxic signs noted in the rat subchronic study at any dose;

• No neurotoxic signs in the adult or offspring in the developmental and reproduction studies; and

• No neurotoxicity noted in any developmental toxicity study.

iii. There is no evidence that triflumizole results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study. Although there is evidence of increased qualitative susceptibility in the prenatal developmental study in rats, the Agency did not identify any residual uncertainties after establishing toxicity endpoints, traditional UFs for single exposure scenarios, and an additional 3X SF for repeated exposures to triflumizole (to address concerns for the use of a LOAEL instead of a NOAEL to derive the cRfD.

iv. The chronic POD is derived from the use of a LOAEL (based on liver toxicity; aseosinophilic foci in male rats and fatty vacuolation and inflammation and necrosis in female rats) established in the combined chronic toxicity/carcinogenicity study in rats. Although use of a LOAEL as a POD raises uncertainty, here the uncertainty is relatively low indicating that a 3X FQPA safety factor will be adequate. That conclusion is based on the following weight of evidence considerations:

• The most sensitive endpoint in the target organ (liver) for this class of compounds (imidazole fungicide) is used for assessing chronic risk;

• There is low concern for the observed effects since the lesions did not progress into malignancy;

• The response was marginal at the LOAEL;

• The available data do not show this chemical to be a potent toxicant, as clear NOAELs were established following dietary administrations in all other studies, such as the 2–generation reproduction study in rat (3.5 mg/kg/day); subchronic rat (15.3 mg/kg/day) and mouse (33.1 mg/kg/day) studies; chronic dog study (10 mg/kg/day); and mouse carcinogenicity (16.2 mg/kg/day) study; and

• The extrapolated NOAEL of 1.2 mg/kg/day is supported by a comparable NOAEL (2.5 mg/kg/day) used to derive the cRfD for a structurally-related chemical (Imazalil).

Based on these weight-of-evidence considerations, EPA is confident that the 3X FQPA SF is adequate to address the concerns for the lack of a NOAEL in the rat combined chronic toxicity/carcinogenicity study and that the cRfD would not underestimate dietary risk from chronic exposure to triflumizole. Specific information regarding the additional FQPA safety factor for chronic exposure to triflumizole can be found at *http://www.regulations.gov* in document ''Triflumizole: A Short History of the Chronic Endpoint'' in docket ID number EPA–HQ–OPP–2007–0312.

v. There are no residual uncertainties identified in the exposure databases. The acute dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. The chronic dietary food exposure assessment utilized tolerance-level residues or anticipated residues that are based on reliable field trial data. For several currently registered commodities, the chronic assessment also utilized PCT data that have a valid basis and are considered to be reliable. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to triflumizole in drinking water. At this time, residential exposure of infants and children is expected to be negligible from the use of triflumizole. These assessments will not underestimate the exposure and risks posed by triflumizole.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for acute

exposure, EPA performed separate acute risk assessments for females 13 to 49 years old and for the general population, including infants and children, based on different endpoints and aPADs. For females aged 13–49, acute dietary exposure to triflumizole from food and water will occupy 67% of the aPAD chosen for that population subgroup. For the general population and population subgroups other than females aged 13–49, acute dietary exposure to triflumizole is greatest for children 1-2 years old. That subgroup will occupy 40% of the applicable aPAD.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to triflumizole from food and water will utilize 44% of the cPAD for children 1-2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of triflumizole is not expected.

3. *Short-term and intermediate-term risk*. Short-term and intermediate-term aggregate exposure takes into account short-term and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Although triflumizole is registered for commercial use on ornamentals in residential areas, this use is not expected to result in significant short-term or intermediate-term exposures of adults or children. Therefore, the short-term and intermediate-term aggregate risk is the sum of the risk from exposure to triflumizole through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population*. Based on the absence of significant tumor increases in two rodent carcinogenicity studies, triflumizole was classified as ''not likely to be carcinogenic to humans,'' and is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate Gas Chromatography/Nitrogen Phosphorus Detector (GC/NPD) method is available in Pesticide Analytical Methods (PAM) Vol. II (Method I, section 180.476) for determining the combined residues of triflumizole and its metabolites containing the FA-1-1 moiety in plant commodities. The method limit of quantitation (LOQ) is 0.5 ppm for plant commodities.

B. International Residue Limits

There are no Codex, Canadian or Mexican maximum residue limits (MRLs) established for residues of triflumizole in or on commodities associated with this petition.

C. Revisions to Petitioned-For Tolerances

Based upon review of the data supporting the petition, EPA revised the proposed tolerances for the following commodities: Brassica, leafy greens, subgroup 5B from 20 ppm to 40 ppm; and Brassica, head and stem, subgroup 5A from 5.0 ppm to 8.0 ppm. EPA revised the tolerance levels based on analysis of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's Guidance Italicize Guiidance for Setting Pesticide Tolerances Based on Field Trial Data. EPA also revised the tolerance expression to clarify 1. That, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of triflumizole not specifically mentioned; and 2. That compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression. This change was made to both the tolerance expressions for plant commodities and animal commodities because it makes no substantive change to the meaning of the tolerance but rather only clarifies the existing language.

V. Conclusion

Therefore, tolerances are established for combined residues of triflumizole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1 *H* -imidazole, and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, in or on leafy greens subgroup 4A, except spinach at 35 ppm; Brassica, head and stem, subgroup 5A at 8.0 ppm; Brassica, leafy greens, subgroup 5B at 40.0 ppm; cilantro, leaves at 35 ppm; Swiss chard at 18 ppm; pineapple at 4.0 ppm; papaya at 2.5 ppm; sapote, black at 2.5 ppm; canistel at 2.5 ppm; sapote, mamey at 2.5 ppm; mango at 2.5 ppm; sapodilla at 2.5 ppm; star apple at 2.5 ppm; hop, dried cones at 50.0 ppm; and turnip, greens at 40 ppm.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the

Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 22, 2009.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ Section 180.476 is amended by revising the introductory text for paragraph (a)(1); by alphabetically adding the following commodities to the table in paragraph (a)(1); by revising the introductory text for paragraph (a)(2); and by removing the entries for Broccoli; Collards; Coriander, leaves; Dandelion, leaves; Kale; Mustard, greens; Parsley, leaves; Swiss chard; and Turnip, greens from the table in paragraph (b) to read as follows:

§ 180.476 Triflumizole; tolerances for residues

(a) *General.* (1) Tolerances are established for residues of the fungicide triflumizole, including its metabolites and degradates, in or on the commodities listed in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the parent compound triflumizole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1 *H* -imidazole, and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as stoichiometric equivalent of the parent compound.

Commodity	Parts per million
* * * * *	
Brassica, head and stem, subgroup 5A	8.0
Brassica, leafy greens, subgroup 5B	40
Canistel	2.5
* * * * *	
Cilantro, leaves	35
* * * * *	
Hop, dried cones	50
Leafy greens subgroup 4A, except spinach	35
Mango	2.5
Papaya	2.5
* * * * *	
Pineapple	4.0
Sapodilla	2.5
Sapote, black	2.5
Sapote, mamey	2.5
Star apple	2.5
* * * * *	
Swiss chard	18
Turnip, greens	40
* * * * *	

(2) Tolerances are established for residues of the fungicide triflumizole, including its metabolites and degradates, in or on the commodities of animal origin listed in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the parent compound triflumizole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1 *H* -imidazole, the metabolite 4-chloro-2-hydroxy-6-trifluoromethylaniline sulfate, and other metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound.

* * * * *

[FR Doc. E9–12949 Filed 6–2–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0158; FRL–8416–7]

Aspergillus flavus AF36 on Pistachio; Extension of Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the temporary exemption from the requirement of a tolerance for residues of the *Aspergillus flavus* AF36 (*A. flavus* AF36) on pistachio when applied/used

as an antifungal agent to displace aflatoxin-producing fungi. Interregional Research Project Number 4 (IR-4), on behalf of the Arizona Cotton Research and Protection Council, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting the temporary tolerance exemption be amended. The amendment extends the expiration date to December 31, 2011.

DATES: This regulation is effective June 3, 2009. Objections and requests for hearings must be received on or before August 3, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0158. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0158 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 3, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2007–0158, by one of the following methods.

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

II. Background and Statutory Findings

In the **Federal Register** of March 16, 2009 (74 FR 11100) (FRL–8405–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 8E7461) by IR–4, Rutgers University, 500 College Road East, Suite 201W., Princeton, NJ 08540, on behalf of the Arizona Cotton Research and Protection Council, 3721 East Weir Ave., Phoenix, AZ 85040–2933. The petition proposes to amend a temporary exemption from the requirement of a tolerance in 40 CFR 180.1206(b) for residues of the non-aflatoxin-producing microbial antifungal agent, *A. flavus* AF36, in or on pistachio.

This docket included a summary of the petition prepared by the petitioner IR-4 and Arizona Cotton Research and Protection Council. There were no comments received in response to the notice of filing.

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

tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The toxicological profile of the microbial pesticide, *A. flavus* AF36 has been previously described in the final rule of the **Federal Register** issue of July 14, 2003 (68 FR 41535) (FRL–7311–6). The exemption from tolerance of *A. flavus* AF36, a non-aflatoxin-producing strain of *Aspergillus flavus*, on cotton was established in 40 CFR 180.1206. The database supporting that exemption from tolerance also supports the temporary exemption of this active ingredient on pistachio in 40 CFR 180.1206(b). See the **Federal Register** issue of May 23, 2007 (72 FR 28868) (FRL–8129–4).

The microbial pesticide was neither toxic nor infective via the oral and pulmonary routes. It was placed in Toxicity Category IV for acute oral effects. The Toxicity Category III designation for acute inhalation effects is based on the granular nature of the microbial pesticide and the submitted pulmonary studies. This microbial pesticide has been used for more than a decade in experimental laboratory and field trials and in agricultural practice on cotton in Arizona, California, and Texas without any reports of adverse dermal irritation or hypersensitivity effects.

The petitioner now seeks to amend the temporary exemption from the requirement of a tolerance for *A. flavus* AF36 on pistachio in accordance with the Experimental Use Permit (EUP), EPA File Symbol 71693–EUP–1, published in the **Federal Register** issue of May 23, 2007 (72 FR 28971) (FRL–8128–8) and to extend it to December 31, 2011.

No further toxicological data are required for this amended temporary exemption from the requirement of a tolerance for *A. flavus* AF36 on pistachio.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

For aggregate dietary and other non-occupational exposure and cumulative effects, the Agency continues to rely on its previous assessments published in the **Federal Register**, since the extension will not change these exposures and risks. See the previously published July 14, 2003 and May 23, 2007 **Federal Register** documents cited in Unit III.

V. Determination of Safety for U.S. Population, Infants and Children

The Agency also relies on the previous assessments published in the July 14, 2003 and May 23, 2007 **Federal Register** documents cited in Unit III. to determine that there is reasonable certainty that no harm will result from aggregate exposures to residues of the antifungal agent *A. flavus* AF36. Because there are no threshold effects of concern to infants, children and adults when *A. flavus* AF36 is used as labeled, the provision requiring an additional margin of safety does not apply. As a result, EPA has not used a margin of exposure (safety) approach to assess the safety of *A. flavus* AF36.

VI. Other Considerations

A. Analytical Methods and Endocrine Disruptors

The Agency continues to rely on its assessment for endocrine disruptors and analytical methods in the previously published July 14, 2003 **Federal Register** document cited in Unit III.

B. Codex Maximum Residue Level

There is no Codex Maximum Residue Level (MRL) for residues of *A. flavus* AF36 on pistachio.

VII. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled

Federalism (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 20, 2009.

W. Michael McDavit,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.1206(b) is revised to read as follows:

§ 180.1206 Aspergillus flavus AF36, exemption from the requirement of a tolerance.

* * * * *

(b) *Aspergillus flavus* AF36 is temporarily exempt from the requirement of a tolerance on pistachio when used in accordance with the Experimental Use Permit, EPA File Symbol 71693–EUP–1. This temporary exemption from tolerance expires on December 31, 2011.

* * * * *

[FR Doc. E9–12788 Filed 6–2–09; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1337–IFC]

RIN 0938–AP76

Medicare Program; Revisions to FY 2009 Medicare Severity-Long-Term Care Diagnosis-Related Group (MS–LTC–DRG) Weights

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period implements revised Medicare severity long-term care diagnosis-related group (MS–LTC–DRG) relative weights for payment under the long-term care hospital (LTCH) prospective payment system (PPS) for federal fiscal year (FY) 2009. We are revising the MS–LTC–DRG relative weights for FY 2009 due to the misapplication of our established methodology in the calculation of the budget neutrality factor. The revised FY 2009 MS–LTC–DRG relative weights are effective for the remainder of FY 2009 (that is, from June 3, 2009 through September 30, 2009).

DATES: *Effective date:* These regulations are effective on June 3, 2009.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m., June 29, 2009.

ADDRESSES: In commenting, please refer to file code CMS–1337–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1337–IFC, P.O. Box 8011, Baltimore, MD 21244–8011.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1337–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period has ended.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter, (410) 786–4487.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the

comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will be also available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background of the LTCH PPS

A. Legislative and Regulatory Authority

Section 123 of the Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) as amended by section 307(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554) provides for payment for both the operating and capital-related costs of hospital inpatient stays in long-term care hospitals (LTCHs) under Medicare Part A based on prospectively set rates. The Medicare prospective payment system (PPS) for LTCHs applies to hospitals that are described in section 1886(d)(1)(B)(iv) of the Social Security Act (the Act), effective for cost reporting periods beginning on or after October 1, 2002.

In the August 30, 2002 (67 FR 55954) **Federal Register**, we issued a final rule that implemented the LTCH PPS authorized under the BBRA and BIPA. The same final rule established regulations for the LTCH PPS under 42 CFR Part 412, Subpart O. This system currently uses information from LTCH patient records to classify patients into distinct Medicare Severity-long-term care diagnosis-related groups (MS–LTC–DRGs) based on clinical characteristics and expected resource needs. Payments are calculated for each MS–LTC–DRG and provisions are made for appropriate payment adjustments. Payment rates under the LTCH PPS are updated annually and published in the **Federal Register**. We refer readers to the August 30, 2002 (67 FR 55954) final rule for a comprehensive discussion of the research and data that supported the establishment of the LTCH PPS.

B. Annual Updates to the LTCH PPS

For rate years (RYs) 2004 through 2009, annual payment rate update and policy changes under the LTCH PPS were effective beginning on July 1 of each year (RY 2009 is the 15-month rate period July 1, 2008 through September 30, 2009 (see § 412.503)). However, the annual updates of the LTC–DRG (and, beginning in FY 2008, the MS–LTC–DRG) classifications and relative weights for LTCHs are linked to the annual update of the acute care hospital inpatient prospective payment system (IPPS) DRGs and are effective each October 1.

The most recent annual update to the payment rates and policy changes under the LTCH PPS was established in the RY 2009 LTCH PPS final rule (73 FR 26788 through 26874), and is currently effective for the 15-month rate year of July 1, 2008 through September 30, 2009. The most recent annual update to the MS–LTC–DRGs was established in the FY 2009 IPPS final rule (73 FR 48528 through 48551), and is currently effective October 1, 2008 through September 30, 2009.

Beginning with October 1, 2009, the annual updates to the LTCH PPS rates and factors, including the relative weights, and other payment policy changes are effective on October 1.

II. Provisions of This Interim Final Rule With Comment Period

A. FY 2009 MS–LTC–DRG Relative Weights

Beginning with the FY 2008 update, we established a budget neutrality requirement for the annual update to the MS–LTC–DRG classifications and relative weights at § 412.517(b) (in conjunction with § 412.503), such that estimated aggregate LTCH PPS payments would be unaffected, that is, would be neither greater than nor less than the estimated aggregate LTCH PPS payments that would have been made without the classification and relative weight changes. (See the May 11, 2007 LTCH PPS final rule (72 FR 26882 through 26884).)

Consistent with § 412.517(b), in the FY 2009 IPPS final rule (August 19, 2008, (73 FR 48550 through 48551)), using the most recent data available at that time (FY 2007 LTCH claims data from the March 2008 update of the MedPAR files), we established the MS–LTC–DRG classifications and relative weights for FY 2009 based on the application of budget neutrality adjustment factors determined using the two-step methodology of calculating and applying a normalization factor and a budget neutrality factor, as initially established in the FY 2008 IPPS final rule (August 22, 2007, (72 FR 47295 through 47296)). Specifically, for FY 2009, under the first step of the established two-step budget neutrality methodology, after recalibrating the MS–LTC–DRG relative weights, we calculated and applied a normalization factor of 1.03887 to those relative weights to ensure that the average case-mix index (CMI) is not influenced by changes in the composition of case types or the changes to the classification system, such that the recalibration process itself neither increases nor decreases the average CMI. In doing so, each (recalibrated) MS–LTC–DRG relative weight was multiplied by 1.03887 to produce ''normalized relative weights''.

Under the second step of the established two-step budget neutrality methodology, we calculated and applied a ''budget neutrality adjustment factor'' to ensure that estimated aggregate LTCH PPS payments after reclassification and recalibration would be equal to estimated aggregate LTCH PPS payments before reclassification and recalibration. Specifically, as described in the FY 2009 IPPS final rule (73 FR 48551), we calculated a budget neutrality factor of 1.04186 by comparing estimated total payments using the normalized FY 2009 relative weights under GROUPER Version 26.0 to estimated total payments using the FY 2008 GROUPER (Version 25.0) and FY 2008 MS–LTC–DRG relative weights. Then, each of the normalized relative weights was multiplied by that budget neutrality factor to determine the budget neutral relative weight for each MS–LTC–DRG for FY 2009. Thus, the FY 2009 MS–LTC–DRG relative weights established in Table 11 of the Addendum of the FY 2009 IPPS final rule reflect the application of both the normalization factor of 1.03887 and the budget neutrality factor of 1.04186.

We have discovered that, in determining the published FY 2009 MS–LTC–DRG relative weights, we did not properly apply the established methodology for calculating the budget neutrality factor (the second step of the budget neutrality methodology, as set forth in the FY 2009 IPPS final rule (73 FR 48550 through 48551). Specifically, upon recent review of the calculation of the budget neutrality factor of 1.04186, we found that it was determined using the unadjusted recalibrated relative weights rather than using the normalized relative weights. This is inconsistent with our stated methodology for the calculation of the FY 2009 budget neutrality factor (that is, the second step of the budget neutrality methodology). As described above and as we stated in the FY 2009 IPPS final rule (73 FR 48551), the FY 2009 budget

neutrality factor is to be determined based on estimated total payments using the normalized (recalibrated) relative weights under GROUPER Version 26.0 (not the unadjusted recalibrated relative weights as were used in calculating the budget neutrality factor of 1.04186 published in the FY 2009 IPPS final rule). This misapplication of the rule's established methodology for calculating the budget neutrality factors resulted in relative weights that are higher, by approximately 3.9 percent. We estimate aggregate annualized LTCH PPS payments in FY 2009 (that is, for discharges occurring on or after October 1, 2008 through September 30, 2009) based on the MS–LTC–DRG relative weights published in the FY 2009 IPPS final rule to be approximately $130 million greater than what the increase would have been had the FY 2009 budget neutrality factor been calculated consistent with the established methodology described in that final rule. Thus, the FY 2009 MS–LTC–DRG relative weights shown in Table 11 of the FY 2009 IPPS final rule (73 FR 49041 through 49062) are inconsistent with the established budget neutrality methodology used for the annual update to the MS–LTC–DRG classifications and relative weights.

Consistent with our general and longstanding policy in PPS contexts, we do not make retroactive changes to correct past errors in PPS rate-setting, regardless of whether an error resulted in higher payments to providers (as in this situation) or lower payments to providers; we also do not make prospective adjustments to PPS rates to account for errors that occurred in prior periods, regardless of whether an error resulted in higher payments or lower payments to providers. In this instance, we are, revising the FY 2009 MS–LTC–DRG relative weights to ensure proper application of the established budget neutrality methodology in updating the FY 2008 MS–LTC–DRG relative weights to FY 2009 during the fiscal year that will be effective for the remainder of the fiscal year. We note that this prospective revision to the FY 2009 MS–LTC–DRG relative weights does not reflect a change in the established budget neutrality methodology itself, but rather, reflects the proper calculation of the relative weights under the rule's stated methodology.

In this interim final rule with comment period, we have calculated revised FY 2009 MS–LTC–DRG relative weights (effective prospectively for the remainder of FY 2009) based on the proper application of the established budget neutrality methodology. Specifically, using the same data (FY 2007 LTCH claims data from the March 2008 update of the MedPAR files) and methodology presented in the FY 2009 IPPS final rule (73 FR 48551) described above, we have determined a budget neutrality factor of 1.0030401, which was applied to the normalized relative weights (that is, the recalibrated relative weights adjusted by the normalization factor of 1.03887, as described above). As a result, we are establishing revised FY 2009 MS–LTC–DRG relative weights (shown in Table 11 of this interim final rule with comment period) that are effective for LTCH PPS discharges occurring on or after June 3, 2009 through September 30, 2009. The revised FY 2009 MS–LTC–DRG relative weights in Table 11 of this interim final rule with comment period reflect the application of the revised FY 2009 budget neutrality factor 1.0030401 and the FY 2009 normalization factor of 1.03887 (established in the FY 2009 IPPS final rule (73 FR 48551)). (For the convenience of the reader, in addition to the revised budget neutral FY 2009 MS–LTC–DRG relative weights effective June 3, 2009 through September 30, 2009, Table 11 also includes the geometric mean length of stay and five-sixths of the geometric mean length of stay (Short-Stay Outlier (SSO) Threshold for payments under § 412.529) for each MS–LTC–DRG for FY 2009. The revision to the FY 2009 budget neutrality factor did not affect the calculation of the geometric mean length of stay and the SSO threshold for FY 2009 that were presented in Table 11 of the FY 2009 IPPS final rule.)

B. Effect on the Proposed RY 2010 MS–LTC–DRG Relative Weights and Fixed-Loss Amount

As discussed above in section II.A. of this interim final rule with comment period, we are revising the published FY 2009 MS–LTC–DRG relative weights (73 FR 49041 through 49062), based on the appropriate application of the FY 2009 budget neutrality factor, consistent with the description of our established methodology. Because the proposed RY 2010 MS–LTC–DRG relative weights published in the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule on May 22, 2009 (74 FR 24589 through 24608) were determined based on the published FY 2009 MS–LTC–DRG relative weights, the revisions to the published FY 2009 MS–LTC–DRG relative weights discussed in section II.A. of this interim final rule with comment period affect the determination of the proposed RY 2010 MS–LTC–DRG relative weights. Therefore, we are also presenting proposed RY 2010 MS–LTC–DRG relative weights in a supplemental proposed rule published elsewhere in this **Federal Register**. The proposed RY 2010 MS–LTC–DRG relative weights were determined consistent with the proposed two-step budget neutrality methodology discussed in the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24226 through 24227).

We also note that the proposed RY 2010 HCO fixed-loss amount presented in the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24268) was determined based on the proposed RY 2010 MS–LTC–DRG relative weights presented in Table 11 of that proposed rule. Thus, the supplemental proposed rule published elsewhere in this **Federal Register** also determines a proposed RY 2010 HCO fixed-loss amount based on the proposed RY 2010 MS–LTC–DRG relative weights presented in that same supplemental proposed rule.

III. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking, Delay of Effective Date, and 60-Day Comment Period

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before provisions of a rule such as this take effect. We also ordinarily provide a 30-day delay in effective date of a rule in accordance with section 553(d) of the Administrative Procedure Act (APA) (5 U.S.C. 553(d)), and section 1871 of the Act. However, we can waive both the prior notice-and-comment procedure or the delay in effective date, if the Secretary for good cause finds that it is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the notice issued.

We believe it is unnecessary to undertake prior notice and comment rulemaking or provide a delay in effective date because this interim final rule with comment period simply reflects the appropriate application of the established methodology set forth in the FY 2009 IPPS final rule (73 FR 48550 through 48551). The LTCH statute provides for annual updates to the LTCH PPS MS–LTC–DRG relative

weights, and the methodologies used to update the MS–LTC–DRG relative weights have been previously subject to public comment, and therefore, additional comment would be unnecessary.

Moreover, we believe that it is impracticable to undertake prior notice and comment rulemaking or provide a delay in effective date because this interim final rule with comment period is making a prospective revision to the FY 2009 MS–LTC–DRG relative weights to reflect proper application of the applicable established methodology, and therefore should be applied in as timely a manner as possible. For the reasons set forth above, we find good cause to waive notice-and-comment procedures, as well as the 30-day delay in effective date.

In addition, we ordinarily publish an interim final rule with comment period in the **Federal Register** and permit a 60-day comment period, as provided in section 1871(b)(1) of the Act. This period, however, may be shortened, as provided under section 1871(b)(2)(C), when the agency finds good cause that a 60-day comment period would be impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. For the reasons set forth above, and because we plan to finalize the provisions of this interim final rule with comment period at the same time that the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule is finalized, we are waiving the 60-day comment period for good cause and allowing a 30-day comment period instead.

V. 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).

VI. Regulatory Impact Analysis

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year).

The revision to the FY 2009 MS–LTC–DRG relative weights presented in section II.A. of this interim final rule with comment period will affect LTCH PPS payments for discharges occurring for approximately the last 4 months of FY 2009. Specifically, we estimate that the impact of the revision to the FY 2009 MS–LTC–DRG relative weights effective from June 3, 2009 through September 30, 2009 would result in an aggregate decrease in FY 2009 LTCH PPS payments of approximately $43 million (or approximately 0.9 percent of estimated FY 2009 LTCH PPS payments). Because the distributional effects and estimated changes to the Medicare program payments would not be greater than $100 million, this interim final rule with comment period would not be considered a major economic rule, as defined in this section.

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 government jurisdictions. Most hospitals and most other providers and suppliers are considered to be small entities, either by being nonprofit organizations or by meeting the Small Business Administration definition of a small business (having revenues of $34.5 million or less in any 1 year). (For details on the latest standards for heath care providers, we refer readers to the Table of Small Business Size Standards for NAIC 622 found on the Small Business Administration Office of Size Standards Web site at: *http://www.sba.gov/contractingopportunities/officials/size/GC-SMALL-BUS-SIZE-STANDARDS.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. Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary LTCHs. Therefore, we are assuming that all LTCHs are considered small entities for the purpose of the analysis in this section. Because we acknowledge that many of the affected entities are small entities, the analysis discussed in this section constitutes our regulatory flexibility analysis. Therefore, we are soliciting public comments on our estimates and analysis of the impact of the provisions of this interim final rule with comment period on those 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 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. In our database of 399 LTCHs, we have identified 26 small rural hospitals that account for less than 5 percent of all LTCH cases. As stated above, the provisions of this interim final rule with comment period will result in a decrease in estimated aggregate LTCH PPS payments in FY 2009 of approximately $43 million (or approximately 0.9 percent) for all LTCHs. Similarly, for the 26 rural LTCHs for which data is available, we estimate that the provisions of this interim final rule with comment period will result in a decrease in estimated aggregate LTCH PPS payments to rural LTCHs in FY 2009 of approximately 0.9 percent (or about $1.6 million). Therefore, we believe this rule will not have a significant impact on small rural hospitals. Accordingly, the Secretary certifies that this interim final rule with comment period would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2009, that threshold level is currently approximately $133 million. This interim final rule with comment period would not mandate any requirements for State, local, or tribal governments, nor would it result in expenditures by the private sector of $133 million or more in any one year.

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. Since this regulation does not impose

any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 21, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: May 27, 2009.

Kathleen Sebelius,

Secretary.

[**Editorial Note:** The following table will not appear in the Code of Federal Regulations.]

BILLING CODE 4120–01–P

TABLE 11.—FY 2009 MS-LTC-DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY AND SHORT-STAY OUTLIER THRESHOLD EFFECTIVE FOR DISCHARGES OCCURRING FROM JUNE 3, 2009 THROUGH SEPTEMBER 30, 2009

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
1	1	Heart transplant or implant of heart assist system w MCC	0	0.0000	0.0	0.0
2	1	Heart transplant or implant of heart assist system w/o MCC	0	0.0000	0.0	0.0
3	3	ECMO or trach w MV 96+ hrs or PDX exc face, mouth & neck w maj O.R.	291	4.5940	66.9	55.8
4	4	Trach w MV 96+ hrs or PDX exc face, mouth & neck w/o maj O.R.	1,211	2.9711	44.5	37.1
5	5	Liver transplant w MCC or intestinal transplant	0	0.0000	0.0	0.0
6	5	Liver transplant w/o MCC	0	0.0000	0.0	0.0
7	7	Lung transplant	0	0.0000	0.0	0.0
8	8	Simultaneous pancreas/kidney transplant	0	0.0000	0.0	0.0
9	9	Bone marrow transplant	0	1.2440	31.4	26.2
10	10	Pancreas transplant	0	0.0000	0.0	0.0
11	11	Tracheostomy for face,mouth & neck diagnoses w MCC	1	1.7291	38.2	31.8
12	11	Tracheostomy for face,mouth & neck diagnoses w CC	1	1.7291	38.2	31.8
13	11	Tracheostomy for face,mouth & neck diagnoses w/o CC/MCC	0	1.7291	38.2	31.8
20	20	Intracranial vascular procedures w PDX hemorrhage w MCC	0	1.7291	38.2	31.8
21	20	Intracranial vascular procedures w PDX hemorrhage w CC	0	1.7291	38.2	31.8
22	20	Intracranial vascular procedures w PDX hemorrhage w/o CC/MCC	0	1.7291	38.2	31.8
23	23	Craniotomy w major device implant or acute complex CNS PDX w MCC	2	1.2440	31.4	26.2
24	23	Craniotomy w major device implant or acute complex CNS PDX w/o MCC	1	1.2440	31.4	26.2
25	25	Craniotomy & endovascular intracranial procedures w MCC	2	1.7291	38.2	31.8
26	25	Craniotomy & endovascular intracranial procedures w CC	3	1.7291	38.2	31.8
27	25	Craniotomy & endovascular intracranial procedures w/o CC/MCC	1	0.8491	25.2	21.0
28	28	Spinal procedures w MCC	12	1.2440	31.4	26.2
29	28	Spinal procedures w CC	9	1.2440	31.4	26.2
30	28	Spinal procedures w/o CC/MCC	1	1.2440	31.4	26.2
31	31	Ventricular shunt procedures w MCC	5	1.7291	38.2	31.8
32	31	Ventricular shunt procedures w CC	1	1.7291	38.2	31.8
33	31	Ventricular shunt procedures w/o CC/MCC	0	1.7291	38.2	31.8

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
34	34	Carotid artery stent procedure w MCC	0	1.2440	31.4	26.2
35	34	Carotid artery stent procedurew CC	0	1.2440	31.4	26.2
36	34	Carotid artery stent procedure w/o CC/MCC	0	1.2440	31.4	26.2
37	37	Extracranial procedures w MCC	7	1.2440	31.4	26.2
38	37	Extracranial procedures w CC	6	1.2440	31.4	26.2
39	37	Extracranial procedures w/o CC/MCC	0	1.2440	31.4	26.2
40	40	Periph & cranial nerve & other nerv syst proc w MCC	143	1.2319	34.8	29.0
41	40	Periph & cranial nerve & other nerv syst proc w CC	88	1.0740	34.2	28.5
42	40	Periph & cranial nerve & other nerv syst proc w/o CC/MCC	6	1.0740	34.2	28.5
52	52	Spinal disorders & injuries w CC/MCC	84	1.0123	31.6	26.3
53	52	Spinal disorders & injuries w/o CC/MCC	7	0.8491	25.2	21.0
54	54	Nervous system neoplasms w MCC	31	0.9965	26.7	22.3
55	54	Nervous system neoplasms w/o MCC	50	0.6501	21.6	18.0
56	56	Degenerative nervous system disorders w MCC	1,185	0.7925	25.3	21.1
57	56	Degenerative nervous system disorders w/o MCC	1,947	0.5972	24.0	20.0
58	58	Multiple sclerosis & cerebellar ataxia w MCC	19	0.8491	25.2	21.0
59	58	Multiple sclerosis & cerebellar ataxia w CC	24	0.6281	21.7	18.1
60	58	Multiple sclerosis & cerebellar ataxia w/o CC/MCC	10	0.6281	21.7	18.1
61	61	Acute ischemic stroke w use of thrombolytic agent w MCC	0	0.8706	23.6	19.7
62	61	Acute ischemic stroke w use of thrombolytic agent w CC	0	0.5958	23.6	19.7
63	61	Acute ischemic stroke w use of thrombolytic agent w/o CC/MCC	0	0.4811	19.5	16.3
64	64	Intracranial hemorrhage or cerebral infarction w MCC	107	0.7700	24.5	20.4
65	64	Intracranial hemorrhage or cerebral infarction w CC	68	0.6120	24.0	20.0
66	64	Intracranial hemorrhage or cerebral infarction w/o CC/MCC	24	0.4811	19.5	16.3
67	67	Nonspecific cva & precerebral occlusion w/o infarct w MCC	4	0.4811	19.5	16.3
68	67	Nonspecific cva & precerebral occlusion w/o infarct w/o MCC	4	0.4811	19.5	16.3
69	69	Transient ischemia	13	0.4811	19.5	16.3
70	70	Nonspecific cerebrovascular disorders w MCC	88	0.8706	23.6	19.7
71	70	Nonspecific cerebrovascular disorders w CC	53	0.5958	23.6	19.7
72	70	Nonspecific cerebrovascular disorders w/o CC/MCC	8	0.4811	19.5	16.3
73	73	Cranial & peripheral nerve disorders w MCC	116	0.8806	24.6	20.5
74	73	Cranial & peripheral nerve disorders w/o MCC	175	0.6043	23.3	19.4
75	75	Viral meningitis w CC/MCC	15	0.6281	21.7	18.1
76	75	Viral meningitis w/o CC/MCC	0	0.6281	21.7	18.1
77	77	Hypertensive encephalopathy w MCC	4	1.2440	31.4	26.2
78	77	Hypertensive encephalopathy w CC	1	0.6281	21.7	18.1
79	77	Hypertensive encephalopathy w/o CC/MCC	1	0.4811	19.5	16.3
80	80	Nontraumatic stupor & coma w MCC	47	0.7853	29.2	24.3
81	80	Nontraumatic stupor & coma w/o MCC	110	0.7024	28.2	23.5
82	82	Traumatic stupor & coma, coma >1 hr w MCC	9	0.8491	25.2	21.0
83	82	Traumatic stupor & coma, coma >1 hr w CC	12	0.6281	21.7	18.1
84	82	Traumatic stupor & coma, coma >1 hr w/o CC/MCC	3	0.6281	21.7	18.1
85	85	Traumatic stupor & coma, coma <1 hr w MCC	79	0.8652	26.6	22.2

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
86	85	Traumatic stupor & coma, coma <1 hr w CC	81	0.6542	24.1	20.1
87	85	Traumatic stupor & coma, coma <1 hr w/o CC/MCC	15	0.4811	19.5	16.3
88	88	Concussion w MCC	0	0.4811	19.5	16.3
89	88	Concussion w CC	1	0.4811	19.5	16.3
90	88	Concussion w/o CC/MCC	0	0.4811	19.5	16.3
91	91	Other disorders of nervous system w MCC	221	0.9149	25.9	21.6
92	91	Other disorders of nervous system w CC	141	0.6891	25.3	21.1
93	91	Other disorders of nervous system w/o CC/MCC	43	0.5992	22.0	18.3
94	94	Bacterial & tuberculous infections of nervous system w MCC	203	1.0331	29.2	24.3
95	94	Bacterial & tuberculous infections of nervous system w CC	107	0.9374	28.5	23.8
96	94	Bacterial & tuberculous infections of nervous system w/o CC/MCC	31	0.7475	27.6	23.0
97	97	Non-bacterial infect of nervous sys exc viral meningitis w MCC	49	1.0481	26.3	21.9
98	97	Non-bacterial infect of nervous sys exc viral meningitis w CC	22	0.8491	25.2	21.0
99	97	Non-bacterial infect of nervous sys exc viral meningitis w/o CC/MCC	6	0.6281	21.7	18.1
100	100	Seizures w MCC	47	0.6299	21.8	18.2
101	100	Seizures w/o MCC	55	0.6060	25.4	21.2
102	102	Headaches w MCC	10	0.6281	21.7	18.1
103	102	Headaches w/o MCC	4	0.6281	21.7	18.1
113	113	Orbital procedures w CC/MCC	1	0.8491	25.2	21.0
114	113	Orbital procedures w/o CC/MCC	0	0.8491	25.2	21.0
115	115	Extraocular procedures except orbit	0	0.4811	19.5	16.3
116	116	Intraocular procedures w CC/MCC	1	0.8491	25.2	21.0
117	116	Intraocular procedures w/o CC/MCC	0	0.4811	19.5	16.3
121	121	Acute major eye infections w CC/MCC	10	0.6281	21.7	18.1
122	121	Acute major eye infections w/o CC/MCC	1	0.6281	21.7	18.1
123	123	Neurological eye disorders	0	0.4811	19.5	16.3
124	124	Other disorders of the eye w MCC	2	0.6281	21.7	18.1
125	124	Other disorders of the eye w/o MCC	8	0.4811	19.5	16.3
129	129	Major head & neck procedures w CC/MCC or major device	0	1.2905	29.5	24.6
130	129	Major head & neck procedures w/o CC/MCC	0	0.4811	19.5	16.3
131	131	Cranial/facial procedures w CC/MCC	0	1.7291	38.2	31.8
132	131	Cranial/facial procedures w/o CC/MCC	1	1.7291	38.2	31.8
133	133	Other ear, nose, mouth & throat O.R. procedures w CC/MCC	10	1.2440	31.4	26.2
134	133	Other ear, nose, mouth & throat O.R. procedures w/o CC/MCC	0	1.2440	31.4	26.2
135	135	Sinus & mastoid procedures w CC/MCC	2	0.4811	19.5	16.3
136	135	Sinus & mastoid procedures w/o CC/MCC	1	0.4811	19.5	16.3
137	137	Mouth procedures w CC/MCC	1	1.7291	38.2	31.8
138	137	Mouth procedures w/o CC/MCC	0	1.7291	38.2	31.8
139	139	Salivary gland procedures	0	1.7291	38.2	31.8
146	146	Ear, nose, mouth & throat malignancy w MCC	39	1.2905	29.5	24.6

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
147	146	Ear, nose, mouth & throat malignancy w CC	25	1.0069	23.0	19.2
148	146	Ear, nose, mouth & throat malignancy w/o CC/MCC	6	0.4811	19.5	16.3
149	149	Dysequilibrium	11	0.4811	19.5	16.3
150	150	Epistaxis w MCC	0	0.8491	25.2	21.0
151	150	Epistaxis w/o MCC	0	0.6281	21.7	18.1
152	152	Otitis media & URI w MCC	9	0.8491	25.2	21.0
153	152	Otitis media & URI w/o MCC	23	0.6281	21.7	18.1
154	154	Nasal trauma & deformity w MCC	50	0.7626	22.0	18.3
155	154	Nasal trauma & deformity w CC	47	0.6937	21.1	17.6
156	154	Nasal trauma & deformity w/o CC/MCC	13	0.6281	21.7	18.1
157	157	Dental & Oral Diseases w MCC	12	0.6281	21.7	18.1
158	157	Dental & Oral Diseases w CC	21	0.6281	21.7	18.1
159	157	Dental & Oral Diseases w/o CC/MCC	5	0.4811	19.5	16.3
163	163	Major chest procedures w MCC	45	2.4763	33.5	27.9
164	163	Major chest procedures w CC	6	1.2440	31.4	26.2
165	163	Major chest procedures w/o CC/MCC	1	0.8491	25.2	21.0
166	166	Other resp system O.R. procedures w MCC	1,515	2.4774	41.9	34.9
167	166	Other resp system O.R. procedures w CC	213	1.8911	36.6	30.5
168	166	Other resp system O.R. procedures w/o CC/MCC	8	0.8491	25.2	21.0
175	175	Pulmonary embolism w MCC	128	0.6569	21.9	18.3
176	175	Pulmonary embolism w/o MCC	139	0.5411	20.0	16.7
177	177	Respiratory infections & inflammations w MCC	3,193	0.8748	22.9	19.1
178	177	Respiratory infections & inflammations w CC	2,340	0.7326	22.1	18.4
179	177	Respiratory infections & inflammations w/o CC/MCC	393	0.6163	19.4	16.2
180	180	Respiratory neoplasms w MCC	149	0.7883	20.9	17.4
181	180	Respiratory neoplasms w CC	109	0.6227	18.8	15.7
182	180	Respiratory neoplasms w/o CC/MCC	11	0.6227	18.8	15.7
183	183	Major chest trauma w MCC	1	0.4811	19.5	16.3
184	183	Major chest trauma w CC	2	0.4811	19.5	16.3
185	183	Major chest trauma w/o CC/MCC	1	0.4811	19.5	16.3
186	186	Pleural effusion w MCC	121	0.7492	20.5	17.1
187	186	Pleural effusion w CC	59	0.6152	20.5	17.1
188	186	Pleural effusion w/o CC/MCC	15	0.6152	20.5	17.1
189	189	Pulmonary edema & respiratory failure	6,613	0.9527	24.0	20.0
190	190	Chronic obstructive pulmonary disease w MCC	1,658	0.7388	20.5	17.1
191	190	Chronic obstructive pulmonary disease w CC	1,347	0.6145	19.4	16.2
192	190	Chronic obstructive pulmonary disease w/o CC/MCC	766	0.5282	17.3	14.4
193	193	Simple pneumonia & pleurisy w MCC	1,810	0.7613	21.6	18.0
194	193	Simple pneumonia & pleurisy w CC	2,028	0.6301	20.1	16.8
195	193	Simple pneumonia & pleurisy w/o CC/MCC	383	0.5318	17.4	14.5
196	196	Interstitial lung disease w MCC	109	0.7056	20.1	16.8
197	196	Interstitial lung disease w CC	85	0.5648	17.6	14.7
198	196	Interstitial lung disease w/o CC/MCC	40	0.4970	15.9	13.3
199	199	Pneumothorax w MCC	50	0.7737	22.2	18.5
200	199	Pneumothorax w CC	32	0.5840	17.8	14.8
201	199	Pneumothorax w/o CC/MCC	5	0.4811	19.5	16.3
202	202	Bronchitis & asthma w CC/MCC	88	0.6441	19.6	16.3
203	202	Bronchitis & asthma w/o CC/MCC	21	0.4811	19.5	16.3
204	204	Respiratory signs & symptoms	233	0.8248	22.8	19.0

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
205	205	Other respiratory system diagnoses w MCC	324	0.8178	22.4	18.7
206	205	Other respiratory system diagnoses w/o MCC	171	0.7098	21.5	17.9
207	207	Respiratory system diagnosis w ventilator support 96+ hours	13,299	2.0584	34.6	28.8
208	208	Respiratory system diagnosis w ventilator support <96 hours	1,466	1.1568	23.5	19.6
215	215	Other heart assist system implant	0	0.8491	25.2	21.0
216	216	Cardiac valve & oth maj cardiothoracic proc w card cath w MCC	0	1.2440	31.4	26.2
217	216	Cardiac valve & oth maj cardiothoracic proc w card cath w CC	0	0.8491	25.2	21.0
218	216	Cardiac valve & oth maj cardiothoracic proc w card cath w/o CC/MCC	0	0.8491	25.2	21.0
219	219	Cardiac valve & oth maj cardiothoracic proc w/o card cath w MCC	0	1.2440	31.4	26.2
220	219	Cardiac valve & oth maj cardiothoracic proc w/o card cath w CC	0	0.8491	25.2	21.0
221	219	Cardiac valve & oth maj cardiothoracic proc w/o card cath w/o CC/MCC	0	0.8491	25.2	21.0
222	222	Cardiac defib implant w cardiac cath w AMI/HF/shock w MCC	0	1.7291	38.2	31.8
223	222	Cardiac defib implant w cardiac cath w AMI/HF/shock w/o MCC	0	1.7291	38.2	31.8
224	224	Cardiac defib implant w cardiac cath w/o AMI/HF/shock w MCC	0	1.7291	38.2	31.8
225	224	Cardiac defib implant w cardiac cath w/o AMI/HF/shock w/o MCC	0	1.7291	38.2	31.8
226	226	Cardiac defibrillator implant w/o cardiac cath w MCC	11	1.7291	38.2	31.8
227	226	Cardiac defibrillator implant w/o cardiac cath w/o MCC	9	1.7291	38.2	31.8
228	228	Other cardiothoracic procedures w MCC	0	1.5200	34.2	28.5
229	228	Other cardiothoracic procedures w CC	0	1.1869	28.8	24.0
230	228	Other cardiothoracic procedures w/o CC/MCC	0	0.6281	21.7	18.1
231	231	Coronary bypass w PTCA w MCC	0	1.2440	31.4	26.2
232	231	Coronary bypass w PTCA w/o MCC	0	0.8491	25.2	21.0
233	233	Coronary bypass w cardiac cath w MCC	0	1.2440	31.4	26.2
234	233	Coronary bypass w cardiac cath w/o MCC	0	0.8491	25.2	21.0
235	235	Coronary bypass w/o cardiac cath w MCC	0	1.2440	31.4	26.2
236	235	Coronary bypass w/o cardiac cath w/o MCC	0	0.8491	25.2	21.0
237	237	Major cardiovascular procedures w MCC	8	1.2440	31.4	26.2
238	237	Major cardiovascular procedures w/o MCC	2	0.8491	25.2	21.0
239	239	Amputation for circ sys disorders exc upper limb & toe w MCC	164	1.5045	36.8	30.7
240	239	Amputation for circ sys disorders exc upper limb & toe w CC	83	1.1426	34.1	28.4
241	239	Amputation for circ sys disorders exc upper limb & toe w/o CC/MCC	10	0.8491	25.2	21.0
242	242	Permanent cardiac pacemaker implant w MCC	12	1.7291	38.2	31.8
243	242	Permanent cardiac pacemaker implant w CC	5	1.7291	38.2	31.8
244	242	Permanent cardiac pacemaker implant w/o CC/MCC	1	1.7291	38.2	31.8
245	245	AICD generator procedures	0	1.7291	38.2	31.8

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
246	246	Percutaneous cardiovascular proc w drug-eluting stent w MCC	4	1.2440	31.4	26.2
247	246	Percutaneous cardiovascular proc w drug-eluting stent w/o MCC	1	1.2440	31.4	26.2
248	248	Percutaneous cardiovasc proc w non-drug-eluting stent w MCC	2	1.2440	31.4	26.2
249	248	Percutaneous cardiovasc proc w non-drug-eluting stent w/o MCC	1	1.2440	31.4	26.2
250	250	Perc cardiovasc proc w/o coronary artery stent or AMI w MCC	3	1.7291	38.2	31.8
251	250	Perc cardiovasc proc w/o coronary artery stent or AMI w/o MCC	0	1.7291	38.2	31.8
252	252	Other vascular procedures w MCC	136	1.5200	34.2	28.5
253	252	Other vascular procedures w CC	53	1.1869	28.8	24.0
254	252	Other vascular procedures w/o CC/MCC	3	0.6281	21.7	18.1
255	255	Upper limb & toe amputation for circ system disorders w MCC	61	1.2448	33.8	28.2
256	255	Upper limb & toe amputation for circ system disorders w CC	42	0.9324	30.0	25.0
257	255	Upper limb & toe amputation for circ system disorders w/o CC/MCC	1	0.4811	19.5	16.3
258	258	Cardiac pacemaker device replacement w MCC	0	1.2440	31.4	26.2
259	258	Cardiac pacemaker device replacement w/o MCC	1	1.2440	31.4	26.2
260	260	Cardiac pacemaker revision except device replacement w MCC	2	1.2440	31.4	26.2
261	260	Cardiac pacemaker revision except device replacement w CC	1	0.8491	25.2	21.0
262	260	Cardiac pacemaker revision except device replacement w/o CC/MCC	1	0.8491	25.2	21.0
263	263	Vein ligation & stripping	3	0.4811	19.5	16.3
264	264	Other circulatory system O.R. procedures	609	1.0788	31.0	25.8
265	265	AICD lead procedures	0	1.2440	31.4	26.2
280	280	Circulatory disorders w AMI, discharged alive w MCC	260	0.7751	23.0	19.2
281	280	Circulatory disorders w AMI, discharged alive w CC	112	0.5724	20.8	17.3
282	280	Circulatory disorders w AMI, discharged alive w/o CC/MCC	35	0.5007	19.9	16.6
283	283	Circulatory disorders w AMI, expired w MCC	56	0.8018	15.9	13.3
284	283	Circulatory disorders w AMI, expired w CC	17	0.8018	15.9	13.3
285	283	Circulatory disorders w AMI, expired w/o CC/MCC	0	0.8018	15.9	13.3
286	286	Circulatory disorders except AMI, w card cath w MCC	8	1.2440	31.4	26.2
287	286	Circulatory disorders except AMI, w card cath w/o MCC	9	0.8491	25.2	21.0
288	288	Acute & subacute endocarditis w MCC	597	0.9942	26.1	21.8
289	288	Acute & subacute endocarditis w CC	217	0.7787	26.1	21.8
290	288	Acute & subacute endocarditis w/o CC/MCC	48	0.6801	24.3	20.3
291	291	Heart failure & shock w MCC	1,730	0.7653	22.0	18.3
292	291	Heart failure & shock w CC	902	0.6229	21.2	17.7
293	291	Heart failure & shock w/o CC/MCC	363	0.5114	18.8	15.7
294	294	Deep vein thrombophlebitis w CC/MCC	6	0.6281	21.7	18.1
295	294	Deep vein thrombophlebitis w/o CC/MCC	0	0.6281	21.7	18.1

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
296	296	Cardiac arrest, unexplained w MCC	0	0.8018	15.9	13.3
297	296	Cardiac arrest, unexplained w CC	0	0.8018	15.9	13.3
298	296	Cardiac arrest, unexplained w/o CC/MCC	0	0.8018	15.9	13.3
299	299	Peripheral vascular disorders w MCC	588	0.7721	23.4	19.5
300	299	Peripheral vascular disorders w CC	752	0.5759	22.0	18.3
301	299	Peripheral vascular disorders w/o CC/MCC	78	0.5326	20.3	16.9
302	302	Atherosclerosis w MCC	59	0.7519	21.8	18.2
303	302	Atherosclerosis w/o MCC	61	0.5632	20.1	16.8
304	304	Hypertension w MCC	6	0.4811	19.5	16.3
305	304	Hypertension w/o MCC	15	0.4811	19.5	16.3
306	306	Cardiac congenital & valvular disorders w MCC	59	0.8144	22.7	18.9
307	306	Cardiac congenital & valvular disorders w/o MCC	38	0.7298	22.9	19.1
308	308	Cardiac arrhythmia & conduction disorders w MCC	97	0.8371	25.1	20.9
309	308	Cardiac arrhythmia & conduction disorders w CC	109	0.5671	21.1	17.6
310	308	Cardiac arrhythmia & conduction disorders w/o CC/MCC	36	0.4540	19.4	16.2
311	311	Angina pectoris	7	0.4811	19.5	16.3
312	312	Syncope & collapse	57	0.5049	19.7	16.4
313	313	Chest pain	6	0.4811	19.5	16.3
314	314	Other circulatory system diagnoses w MCC	1,309	0.8690	23.0	19.2
315	314	Other circulatory system diagnoses w CC	285	0.6483	21.0	17.5
316	314	Other circulatory system diagnoses w/o CC/MCC	72	0.5963	21.0	17.5
326	326	Stomach, esophageal & duodenal proc w MCC	19	1.7291	38.2	31.8
327	326	Stomach, esophageal & duodenal proc w CC	4	1.7291	38.2	31.8
328	326	Stomach, esophageal & duodenal proc w/o CC/MCC	1	1.7291	38.2	31.8
329	329	Major small & large bowel procedures w MCC	31	2.2372	41.8	34.8
330	329	Major small & large bowel procedures w CC	12	1.7291	38.2	31.8
331	329	Major small & large bowel procedures w/o CC/MCC	1	1.7291	38.2	31.8
332	332	Rectal resection w MCC	0	1.6564	34.3	28.6
333	332	Rectal resection w CC	0	1.1576	30.0	25.0
334	332	Rectal resection w/o CC/MCC	0	1.1576	30.0	25.0
335	335	Peritoneal adhesiolysis w MCC	6	1.7291	38.2	31.8
336	335	Peritoneal adhesiolysis w CC	0	1.7291	38.2	31.8
337	335	Peritoneal adhesiolysis w/o CC/MCC	0	1.7291	38.2	31.8
338	338	Appendectomy w complicated principal diag w MCC	0	0.9559	25.1	20.9
339	338	Appendectomy w complicated principal diag w CC	0	0.7667	23.2	19.3
340	338	Appendectomy w complicated principal diag w/o CC/MCC	0	0.5886	19.6	16.3
341	341	Appendectomy w/o complicated principal diag w MCC	0	0.9559	25.1	20.9
342	341	Appendectomy w/o complicated principal diag w CC	0	0.7667	23.2	19.3
343	341	Appendectomy w/o complicated principal diag w/o CC/MCC	0	0.5886	19.6	16.3
344	344	Minor small & large bowel procedures w MCC	5	1.7291	38.2	31.8
345	344	Minor small & large bowel procedures w CC	0	1.7291	38.2	31.8
346	344	Minor small & large bowel procedures w/o CC/MCC	0	1.7291	38.2	31.8
347	347	Anal & stomal procedures w MCC	3	1.7291	38.2	31.8
348	347	Anal & stomal procedures w CC	3	1.2440	31.4	26.2
349	347	Anal & stomal procedures w/o CC/MCC	0	1.2440	31.4	26.2
350	350	Inguinal & femoral hernia procedures w MCC	0	1.2440	31.4	26.2
351	350	Inguinal & femoral hernia procedures w CC	0	1.2440	31.4	26.2
352	350	Inguinal & femoral hernia procedures w/o CC/MCC	0	1.2440	31.4	26.2

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
353	353	Hernia procedures except inguinal & femoral w MCC	1	1.7291	38.2	31.8
354	353	Hernia procedures except inguinal & femoral w CC	1	0.6281	21.7	18.1
355	353	Hernia procedures except inguinal & femoral w/o CC/MCC	0	0.6281	21.7	18.1
356	356	Other digestive system O.R. procedures w MCC	142	1.6564	34.3	28.6
357	356	Other digestive system O.R. procedures w CC	36	1.1576	30.0	25.0
358	356	Other digestive system O.R. procedures w/o CC/MCC	4	1.1576	30.0	25.0
368	368	Major esophageal disorders w MCC	26	0.9068	21.1	17.6
369	368	Major esophageal disorders w CC	14	0.8491	25.2	21.0
370	368	Major esophageal disorders w/o CC/MCC	4	0.8491	25.2	21.0
371	371	Major gastrointestinal disorders & peritoneal infections w MCC	724	0.9559	25.1	20.9
372	371	Major gastrointestinal disorders & peritoneal infections w CC	351	0.7667	23.2	19.3
373	371	Major gastrointestinal disorders & peritoneal infections w/o CC/MCC	68	0.5886	19.6	16.3
374	374	Digestive malignancy w MCC	97	0.8959	21.7	18.1
375	374	Digestive malignancy w CC	88	0.7739	23.4	19.5
376	374	Digestive malignancy w/o CC/MCC	3	0.6281	21.7	18.1
377	377	G.I. hemorrhage w MCC	90	0.8111	23.8	19.8
378	377	G.I. hemorrhage w CC	53	0.6834	23.8	19.8
379	377	G.I. hemorrhage w/o CC/MCC	19	0.6281	21.7	18.1
380	380	Complicated peptic ulcer w MCC	22	0.8491	25.2	21.0
381	380	Complicated peptic ulcer w CC	17	0.6281	21.7	18.1
382	380	Complicated peptic ulcer w/o CC/MCC	5	0.4811	19.5	16.3
383	383	Uncomplicated peptic ulcer w MCC	0	0.8491	25.2	21.0
384	383	Uncomplicated peptic ulcer w/o MCC	7	0.8491	25.2	21.0
385	385	Inflammatory bowel disease w MCC	36	0.7979	23.3	19.4
386	385	Inflammatory bowel disease w CC	37	0.7063	23.1	19.3
387	385	Inflammatory bowel disease w/o CC/MCC	5	0.4811	19.5	16.3
388	388	G.I. obstruction w MCC	216	0.9452	22.5	18.8
389	388	G.I. obstruction w CC	97	0.7230	20.9	17.4
390	388	G.I. obstruction w/o CC/MCC	18	0.6281	21.7	18.1
391	391	Esophagitis, gastroent & misc digest disorders w MCC	255	0.7853	22.0	18.3
392	391	Esophagitis, gastroent & misc digest disorders w/o MCC	294	0.6490	20.9	17.4
393	393	Other digestive system diagnoses w MCC	783	1.0568	25.7	21.4
394	393	Other digestive system diagnoses w CC	451	0.7815	22.7	18.9
395	393	Other digestive system diagnoses w/o CC/MCC	33	0.5719	22.1	18.4
405	405	Pancreas, liver & shunt procedures w MCC	10	1.2440	31.4	26.2
406	405	Pancreas, liver & shunt procedures w CC	2	1.2440	31.4	26.2
407	405	Pancreas, liver & shunt procedures w/o CC/MCC	0	1.2440	31.4	26.2
408	408	Biliary tract proc except only cholecyst w or w/o c.d.e. w MCC	0	0.6281	21.7	18.1
409	408	Biliary tract proc except only cholecyst w or w/o c.d.e. w CC	1	0.6281	21.7	18.1
410	408	Biliary tract proc except only cholecyst w or w/o c.d.e. w/o CC/MCC	0	0.6281	21.7	18.1
411	411	Cholecystectomy w c.d.e. w MCC	1	1.7291	38.2	31.8
412	411	Cholecystectomy w c.d.e. w CC	0	1.7291	38.2	31.8

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
413	411	Cholecystectomy w c.d.e. w/o CC/MCC	0	1.7291	38.2	31.8
414	414	Cholecystectomy except by laparoscope w/o c.d.e. w MCC	2	1.7291	38.2	31.8
415	414	Cholecystectomy except by laparoscope w/o c.d.e. w CC	3	1.7291	38.2	31.8
416	414	Cholecystectomy except by laparoscope w/o c.d.e. w/o CC/MCC	0	1.7291	38.2	31.8
417	417	Laparoscopic cholecystectomy w/o c.d.e. w MCC	11	1.7291	38.2	31.8
418	417	Laparoscopic cholecystectomy w/o c.d.e. w CC	5	1.7291	38.2	31.8
419	417	Laparoscopic cholecystectomy w/o c.d.e. w/o CC/MCC	0	1.7291	38.2	31.8
420	420	Hepatobiliary diagnostic procedures w MCC	0	0.8491	25.2	21.0
421	420	Hepatobiliary diagnostic procedures w CC	0	0.8491	25.2	21.0
422	420	Hepatobiliary diagnostic procedures w/o CC/MCC	0	0.8491	25.2	21.0
423	423	Other hepatobiliary or pancreas O.R. procedures w MCC	23	1.7291	38.2	31.8
424	423	Other hepatobiliary or pancreas O.R. procedures w CC	2	0.8491	25.2	21.0
425	423	Other hepatobiliary or pancreas O.R. procedures w/o CC/MCC	0	0.8491	25.2	21.0
432	432	Cirrhosis & alcoholic hepatitis w MCC	73	0.6908	20.9	17.4
433	432	Cirrhosis & alcoholic hepatitis w CC	24	0.6281	21.7	18.1
434	432	Cirrhosis & alcoholic hepatitis w/o CC/MCC	0	0.6281	21.7	18.1
435	435	Malignancy of hepatobiliary system or pancreas w MCC	53	0.8133	21.7	18.1
436	435	Malignancy of hepatobiliary system or pancreas w CC	26	0.4869	17.2	14.3
437	435	Malignancy of hepatobiliary system or pancreas w/o CC/MCC	5	0.4811	19.5	16.3
438	438	Disorders of pancreas except malignancy w MCC	244	1.0686	23.4	19.5
439	438	Disorders of pancreas except malignancy w CC	144	0.7499	22.1	18.4
440	438	Disorders of pancreas except malignancy w/o CC/MCC	24	0.6281	21.7	18.1
441	441	Disorders of liver except malig,cirr,alc hepa w MCC	123	0.8104	23.1	19.3
442	441	Disorders of liver except malig,cirr,alc hepa w CC	62	0.7053	21.7	18.1
443	441	Disorders of liver except malig,cirr,alc hepa w/o CC/MCC	14	0.4811	19.5	16.3
444	444	Disorders of the biliary tract w MCC	104	0.8243	22.7	18.9
445	444	Disorders of the biliary tract w CC	34	0.6025	21.3	17.8
446	444	Disorders of the biliary tract w/o CC/MCC	8	0.6025	21.3	17.8
453	453	Combined anterior/posterior spinal fusion w MCC	0	1.7291	38.2	31.8
454	453	Combined anterior/posterior spinal fusion w CC	0	1.7291	38.2	31.8
455	453	Combined anterior/posterior spinal fusion w/o CC/MCC	0	1.7291	38.2	31.8
456	456	Spinal fusion exc cerv w spinal curv, malig or 9+ fusions w MCC	1	1.7291	38.2	31.8
457	456	Spinal fusion exc cerv w spinal curv, malig or 9+ fusions w CC	3	1.7291	38.2	31.8
458	456	Spinal fusion exc cerv w spinal curv, malig or 9+ fusions w/o CC/MCC	0	1.7291	38.2	31.8
459	459	Spinal fusion except cervical w MCC	1	1.7291	38.2	31.8
460	459	Spinal fusion except cervical w/o MCC	0	1.7291	38.2	31.8
461	461	Bilateral or multiple major joint procs of lower extremity w MCC	0	1.7291	38.2	31.8
462	461	Bilateral or multiple major joint procs of lower extremity w/o MCC	0	0.8491	25.2	21.0
463	463	Wnd debrid & skn grft exc hand, for musculo-conn tiss dis w MCC	525	1.4027	38.8	32.3

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
464	463	Wnd debrid & skn grft exc hand, for musculo-conn tiss dis w CC	313	1.0519	34.0	28.3
465	463	Wnd debrid & skn grft exc hand, for musculo-conn tiss dis w/o CC/MCC	63	0.9736	33.9	28.3
466	466	Revision of hip or knee replacement w MCC	3	1.2440	31.4	26.2
467	466	Revision of hip or knee replacement w CC	4	1.2440	31.4	26.2
468	466	Revision of hip or knee replacement w/o CC/MCC	1	0.4811	19.5	16.3
469	469	Major joint replacement or reattachment of lower extremity w MCC	3	1.7291	38.2	31.8
470	469	Major joint replacement or reattachment of lower extremity w/o MCC	3	1.7291	38.2	31.8
471	471	Cervical spinal fusion w MCC	2	0.8491	25.2	21.0
472	471	Cervical spinal fusion w CC	1	0.8491	25.2	21.0
473	471	Cervical spinal fusion w/o CC/MCC	0	0.8491	25.2	21.0
474	474	Amputation for musculoskeletal sys & conn tissue dis w MCC	91	1.5503	38.4	32.0
475	474	Amputation for musculoskeletal sys & conn tissue dis w CC	67	1.1015	33.9	28.3
476	474	Amputation for musculoskeletal sys & conn tissue dis w/o CC/MCC	4	0.8491	25.2	21.0
477	477	Biopsies of musculoskeletal system & connective tissue w MCC	22	1.7291	38.2	31.8
478	477	Biopsies of musculoskeletal system & connective tissue w CC	12	1.2440	31.4	26.2
479	477	Biopsies of musculoskeletal system & connective tissue w/o CC/MCC	0	1.2440	31.4	26.2
480	480	Hip & femur procedures except major joint w MCC	22	1.7291	38.2	31.8
481	480	Hip & femur procedures except major joint w CC	11	1.2440	31.4	26.2
482	480	Hip & femur procedures except major joint w/o CC/MCC	2	0.8491	25.2	21.0
483	483	Major joint & limb reattachment proc of upper extremity w CC/MCC	0	1.7291	38.2	31.8
484	483	Major joint & limb reattachment proc of upper extremity w/o CC/MCC	0	0.8491	25.2	21.0
485	485	Knee procedures w pdx of infection w MCC	10	1.2440	31.4	26.2
486	485	Knee procedures w pdx of infection w CC	10	1.2440	31.4	26.2
487	485	Knee procedures w pdx of infection w/o CC/MCC	2	1.2440	31.4	26.2
488	488	Knee procedures w/o pdx of infection w CC/MCC	1	1.7291	38.2	31.8
489	488	Knee procedures w/o pdx of infection w/o CC/MCC	1	0.6281	21.7	18.1
490	490	Back & neck procedures except spinal fusion w CC/MCC or disc devices	9	1.2440	31.4	26.2
491	490	Back & neck procedures except spinal fusion w/o CC/MCC	0	1.2440	31.4	26.2
492	492	Lower extrem & humer proc except hip, foot, femur w MCC	9	1.2440	31.4	26.2
493	492	Lower extrem & humer proc except hip, foot, femur w CC	10	1.2440	31.4	26.2
494	492	Lower extrem & humer proc except hip, foot, femur w/o CC/MCC	1	0.8491	25.2	21.0
495	495	Local excision & removal int fix devices exc hip & femur w MCC	42	1.1915	35.0	29.2

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
496	495	Local excision & removal int fix devices exc hip & femur w CC	20	1.1915	35.0	29.2
497	495	Local excision & removal int fix devices exc hip & femur w/o CC/MCC	5	1.1915	35.0	29.2
498	498	Local excision & removal int fix devices of hip & femur w CC/MCC	9	1.7291	38.2	31.8
499	498	Local excision & removal int fix devices of hip & femur w/o CC/MCC	0	1.7291	38.2	31.8
500	500	Soft tissue procedures w MCC	68	1.3301	36.7	30.6
501	500	Soft tissue procedures w CC	29	1.0939	33.5	27.9
502	500	Soft tissue procedures w/o CC/MCC	4	0.8491	25.2	21.0
503	503	Foot procedures w MCC	15	1.2440	31.4	26.2
504	503	Foot procedures w CC	22	0.8491	25.2	21.0
505	503	Foot procedures w/o CC/MCC	4	0.8491	25.2	21.0
506	506	Major thumb or joint procedures	0	1.2440	31.4	26.2
507	507	Major shoulder or elbow joint procedures w CC/MCC	1	1.7291	38.2	31.8
508	507	Major shoulder or elbow joint procedures w/o CC/MCC	0	1.7291	38.2	31.8
509	509	Arthroscopy	0	0.8491	25.2	21.0
510	510	Shoulder, elbow or forearm proc, exc major joint proc w MCC	1	0.8491	25.2	21.0
511	510	Shoulder, elbow or forearm proc, exc major joint proc w CC	2	0.8491	25.2	21.0
512	510	Shoulder, elbow or forearm proc, exc major joint proc w/o CC/MCC	0	0.8491	25.2	21.0
513	513	Hand or wrist proc, except major thumb or joint proc w CC/MCC	6	1.2440	31.4	26.2
514	513	Hand or wrist proc, except major thumb or joint proc w/o CC/MCC	1	1.2440	31.4	26.2
515	515	Other musculoskelet sys & conn tiss O.R. proc w MCC	61	1.3548	31.6	26.3
516	515	Other musculoskelet sys & conn tiss O.R. proc w CC	27	0.9050	28.0	23.3
517	515	Other musculoskelet sys & conn tiss O.R. proc w/o CC/MCC	0	0.9050	28.0	23.3
533	533	Fractures of femur w MCC	3	0.6281	21.7	18.1
534	533	Fractures of femur w/o MCC	6	0.6281	21.7	18.1
535	535	Fractures of hip & pelvis w MCC	16	0.8491	25.2	21.0
536	535	Fractures of hip & pelvis w/o MCC	25	0.6059	26.9	22.4
537	537	Sprains, strains, & dislocations of hip, pelvis & thigh w CC/MCC	1	0.4811	19.5	16.3
538	537	Sprains, strains, & dislocations of hip, pelvis & thigh w/o CC/MCC	0	0.4811	19.5	16.3
539	539	Osteomyelitis w MCC	1,327	0.9845	30.3	25.3
540	539	Osteomyelitis w CC	850	0.7588	27.7	23.1
541	539	Osteomyelitis w/o CC/MCC	228	0.6843	27.2	22.7
542	542	Pathological fractures & musculoskelet & conn tiss malig w MCC	23	0.8491	25.2	21.0
543	542	Pathological fractures & musculoskelet & conn tiss malig w CC	42	0.5614	20.5	17.1
544	542	Pathological fractures & musculoskelet & conn tiss malig w/o CC/MCC	17	0.4811	19.5	16.3
545	545	Connective tissue disorders w MCC	50	0.8990	23.5	19.6

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
546	545	Connective tissue disorders w CC	38	0.8394	25.5	21.3
547	545	Connective tissue disorders w/o CC/MCC	5	0.4811	19.5	16.3
548	548	Septic arthritis w MCC	174	0.8943	26.3	21.9
549	548	Septic arthritis w CC	201	0.6986	26.7	22.3
550	548	Septic arthritis w/o CC/MCC	73	0.6012	24.2	20.2
551	551	Medical back problems w MCC	84	0.8866	26.6	22.2
552	551	Medical back problems w/o MCC	157	0.5995	24.1	20.1
553	553	Bone diseases & arthropathies w MCC	15	0.6281	21.7	18.1
554	553	Bone diseases & arthropathies w/o MCC	59	0.4962	21.3	17.8
555	555	Signs & symptoms of musculoskeletal system & conn tissue w MCC	3	0.8491	25.2	21.0
556	555	Signs & symptoms of musculoskeletal system & conn tissue w/o MCC	8	0.4811	19.5	16.3
557	557	Tendonitis, myositis & bursitis w MCC	85	0.8744	25.4	21.2
558	557	Tendonitis, myositis & bursitis w/o MCC	134	0.6443	23.0	19.2
559	559	Aftercare, musculoskeletal system & connective tissue w MCC	1,375	0.8049	26.1	21.8
560	559	Aftercare, musculoskeletal system & connective tissue w CC	1,611	0.6401	24.7	20.6
561	559	Aftercare, musculoskeletal system & connective tissue w/o CC/MCC	732	0.5511	22.8	19.0
562	562	Fx, sprn, strn & disl except femur, hip, pelvis & thigh w MCC	5	0.8491	25.2	21.0
563	562	Fx, sprn, strn & disl except femur, hip, pelvis & thigh w/o MCC	9	0.4811	19.5	16.3
564	564	Other musculoskeletal sys & connective tissue diagnoses w MCC	309	0.8733	24.3	20.3
565	564	Other musculoskeletal sys & connective tissue diagnoses w CC	198	0.6413	22.7	18.9
566	564	Other musculoskeletal sys & connective tissue diagnoses w/o CC/MCC	60	0.6153	22.5	18.8
573	573	Skin graft &/or debrid for skn ulcer or cellulitis w MCC	1,822	1.3856	38.3	31.9
574	573	Skin graft &/or debrid for skn ulcer or cellulitis w CC	1,770	1.0725	36.1	30.1
575	573	Skin graft &/or debrid for skn ulcer or cellulitis w/o CC/MCC	200	0.8934	30.1	25.1
576	576	Skin graft &/or debrid exc for skin ulcer or cellulitis w MCC	27	1.7714	37.6	31.3
577	576	Skin graft &/or debrid exc for skin ulcer or cellulitis w CC	28	0.8008	27.3	22.8
578	576	Skin graft &/or debrid exc for skin ulcer or cellulitis w/o CC/MCC	11	0.6281	21.7	18.1
579	579	Other skin, subcut tiss & breast proc w MCC	480	1.3675	36.7	30.6
580	579	Other skin, subcut tiss & breast proc w CC	399	1.0404	33.5	27.9
581	579	Other skin, subcut tiss & breast proc w/o CC/MCC	34	0.7968	30.1	25.1
582	582	Mastectomy for malignancy w CC/MCC	1	1.7291	38.2	31.8
583	582	Mastectomy for malignancy w/o CC/MCC	0	1.7291	38.2	31.8
584	584	Breast biopsy, local excision & other breast procedures w CC/MCC	2	0.6281	21.7	18.1
585	584	Breast biopsy, local excision & other breast procedures w/o CC/MCC	0	0.6281	21.7	18.1
592	592	Skin ulcers w MCC	3,054	0.9378	27.0	22.5

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
593	592	Skin ulcers w CC	2,816	0.7096	26.2	21.8
594	592	Skin ulcers w/o CC/MCC	435	0.6031	24.7	20.6
595	595	Major skin disorders w MCC	28	0.8038	25.3	21.1
596	595	Major skin disorders w/o MCC	39	0.6460	22.4	18.7
597	597	Malignant breast disorders w MCC	7	1.2440	31.4	26.2
598	597	Malignant breast disorders w CC	7	0.8491	25.2	21.0
599	597	Malignant breast disorders w/o CC/MCC	1	0.8491	25.2	21.0
600	600	Non-malignant breast disorders w CC/MCC	17	0.8491	25.2	21.0
601	600	Non-malignant breast disorders w/o CC/MCC	6	0.4811	19.5	16.3
602	602	Cellulitis w MCC	833	0.6883	21.7	18.1
603	602	Cellulitis w/o MCC	1,637	0.5268	19.9	16.6
604	604	Trauma to the skin, subcut tiss & breast w MCC	29	0.8151	24.4	20.3
605	604	Trauma to the skin, subcut tiss & breast w/o MCC	53	0.5989	23.8	19.8
606	606	Minor skin disorders w MCC	63	0.8198	24.5	20.4
607	606	Minor skin disorders w/o MCC	93	0.5537	20.7	17.3
614	614	Adrenal & pituitary procedures w CC/MCC	0	1.0379	32.6	27.2
615	614	Adrenal & pituitary procedures w/o CC/MCC	0	0.8491	25.2	21.0
616	616	Amputat of lower limb for endocrine,nutrit,& metabol dis w MCC	71	1.4615	38.4	32.0
617	616	Amputat of lower limb for endocrine,nutrit,& metabol dis w CC	131	1.1333	33.1	27.6
618	616	Amputat of lower limb for endocrine,nutrit,& metabol dis w/o CC/MCC	2	0.4811	19.5	16.3
619	619	O.R. procedures for obesity w MCC	1	1.7291	38.2	31.8
620	619	O.R. procedures for obesity w CC	0	1.7291	38.2	31.8
621	619	O.R. procedures for obesity w/o CC/MCC	0	1.7291	38.2	31.8
622	622	Skin grafts & wound debrid for endoc, nutrit & metab dis w MCC	173	1.3120	36.2	30.2
623	622	Skin grafts & wound debrid for endoc, nutrit & metab dis w CC	361	1.0048	31.1	25.9
624	622	Skin grafts & wound debrid for endoc, nutrit & metab dis w/o CC/MCC	21	0.6281	21.7	18.1
625	625	Thyroid, parathyroid & thyroglossal procedures w MCC	1	1.2440	31.4	26.2
626	625	Thyroid, parathyroid & thyroglossal procedures w CC	1	0.8491	25.2	21.0
627	625	Thyroid, parathyroid & thyroglossal procedures w/o CC/MCC	0	0.8491	25.2	21.0
628	628	Other endocrine, nutrit & metab O.R. proc w MCC	48	1.3619	32.3	26.9
629	628	Other endocrine, nutrit & metab O.R. proc w CC	111	1.0379	32.6	27.2
630	628	Other endocrine, nutrit & metab O.R. proc w/o CC/MCC	2	0.8491	25.2	21.0
637	637	Diabetes w MCC	424	0.9170	26.6	22.2
638	637	Diabetes w CC	1,059	0.6892	24.5	20.4
639	637	Diabetes w/o CC/MCC	70	0.5743	20.8	17.3
640	640	Nutritional & misc metabolic disorders w MCC	642	0.8333	23.2	19.3
641	640	Nutritional & misc metabolic disorders w/o MCC	552	0.6162	21.5	17.9
642	642	Inborn errors of metabolism	5	0.4811	19.5	16.3
643	643	Endocrine disorders w MCC	30	0.6770	24.0	20.0
644	643	Endocrine disorders w CC	28	0.5337	21.1	17.6
645	643	Endocrine disorders w/o CC/MCC	1	0.4811	19.5	16.3
652	652	Kidney transplant	0	0.0000	0.0	0.0

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
653	653	Major bladder procedures w MCC	2	1.7291	38.2	31.8
654	653	Major bladder procedures w CC	0	1.7291	38.2	31.8
655	653	Major bladder procedures w/o CC/MCC	0	1.7291	38.2	31.8
656	656	Kidney & ureter procedures for neoplasm w MCC	1	1.7291	38.2	31.8
657	656	Kidney & ureter procedures for neoplasm w CC	0	1.7291	38.2	31.8
658	656	Kidney & ureter procedures for neoplasm w/o CC/MCC	0	1.7291	38.2	31.8
659	659	Kidney & ureter procedures for non-neoplasm w MCC	6	1.2440	31.4	26.2
660	659	Kidney & ureter procedures for non-neoplasm w CC	6	1.2440	31.4	26.2
661	659	Kidney & ureter procedures for non-neoplasm w/o CC/MCC	1	0.6281	21.7	18.1
662	662	Minor bladder procedures w MCC	2	1.7291	38.2	31.8
663	662	Minor bladder procedures w CC	2	0.6281	21.7	18.1
664	662	Minor bladder procedures w/o CC/MCC	0	0.6281	21.7	18.1
665	665	Prostatectomy w MCC	2	0.8491	25.2	21.0
666	665	Prostatectomy w CC	1	0.8491	25.2	21.0
667	665	Prostatectomy w/o CC/MCC	0	0.8491	25.2	21.0
668	668	Transurethral procedures w MCC	4	0.8491	25.2	21.0
669	668	Transurethral procedures w CC	3	0.6281	21.7	18.1
670	668	Transurethral procedures w/o CC/MCC	0	0.6281	21.7	18.1
671	671	Urethral procedures w CC/MCC	1	0.6281	21.7	18.1
672	671	Urethral procedures w/o CC/MCC	0	0.6281	21.7	18.1
673	673	Other kidney & urinary tract procedures w MCC	230	1.4321	34.0	28.3
674	673	Other kidney & urinary tract procedures w CC	67	1.1314	29.1	24.3
675	673	Other kidney & urinary tract procedures w/o CC/MCC	0	1.1314	29.1	24.3
682	682	Renal failure w MCC	1,460	0.8881	23.8	19.8
683	682	Renal failure w CC	714	0.7436	22.9	19.1
684	682	Renal failure w/o CC/MCC	91	0.6572	20.6	17.2
685	685	Admit for renal dialysis	32	0.8258	25.1	20.9
686	686	Kidney & urinary tract neoplasms w MCC	15	0.8491	25.2	21.0
687	686	Kidney & urinary tract neoplasms w CC	18	0.8491	25.2	21.0
688	686	Kidney & urinary tract neoplasms w/o CC/MCC	3	0.6281	21.7	18.1
689	689	Kidney & urinary tract infections w MCC	871	0.6664	22.6	18.8
690	689	Kidney & urinary tract infections w/o MCC	783	0.5213	20.5	17.1
691	691	Urinary stones w esw lithotripsy w CC/MCC	0	0.4811	19.5	16.3
692	691	Urinary stones w esw lithotripsy w/o CC/MCC	0	0.4811	19.5	16.3
693	693	Urinary stones w/o esw lithotripsy w MCC	3	0.8491	25.2	21.0
694	693	Urinary stones w/o esw lithotripsy w/o MCC	5	0.4811	19.5	16.3
695	695	Kidney & urinary tract signs & symptoms w MCC	4	1.2440	31.4	26.2
696	695	Kidney & urinary tract signs & symptoms w/o MCC	7	0.6281	21.7	18.1
697	697	Urethral stricture	0	0.6281	21.7	18.1
698	698	Other kidney & urinary tract diagnoses w MCC	284	0.9494	23.6	19.7
699	698	Other kidney & urinary tract diagnoses w CC	143	0.6517	21.9	18.3
700	698	Other kidney & urinary tract diagnoses w/o CC/MCC	31	0.5613	21.0	17.5
707	707	Major male pelvic procedures w CC/MCC	0	1.2440	31.4	26.2
708	707	Major male pelvic procedures w/o CC/MCC	0	0.6281	21.7	18.1
709	709	Penis procedures w CC/MCC	15	1.7291	38.2	31.8
710	709	Penis procedures w/o CC/MCC	0	1.7291	38.2	31.8
711	711	Testes procedures w CC/MCC	6	1.2440	31.4	26.2
712	711	Testes procedures w/o CC/MCC	0	1.2440	31.4	26.2

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
713	713	Transurethral prostatectomy w CC/MCC	2	1.7291	38.2	31.8
714	713	Transurethral prostatectomy w/o CC/MCC	0	1.7291	38.2	31.8
715	715	Other male reproductive system O.R. proc for malignancy w CC/MCC	0	1.2440	31.4	26.2
716	715	Other male reproductive system O.R. proc for malignancy w/o CC/MCC	0	1.2440	31.4	26.2
717	717	Other male reproductive system O.R. proc exc malignancy w CC/MCC	11	1.2440	31.4	26.2
718	717	Other male reproductive system O.R. proc exc malignancy w/o CC/MCC	0	1.2440	31.4	26.2
722	722	Malignancy, male reproductive system w MCC	15	0.6281	21.7	18.1
723	722	Malignancy, male reproductive system w CC	14	0.6281	21.7	18.1
724	722	Malignancy, male reproductive system w/o CC/MCC	0	0.6281	21.7	18.1
725	725	Benign prostatic hypertrophy w MCC	1	0.8491	25.2	21.0
726	725	Benign prostatic hypertrophy w/o MCC	2	0.4811	19.5	16.3
727	727	Inflammation of the male reproductive system w MCC	27	0.7858	23.1	19.3
728	727	Inflammation of the male reproductive system w/o MCC	53	0.5215	20.2	16.8
729	729	Other male reproductive system diagnoses w CC/MCC	48	0.8865	25.9	21.6
730	729	Other male reproductive system diagnoses w/o CC/MCC	8	0.4811	19.5	16.3
734	734	Pelvic evisceration, rad hysterectomy & rad vulvectomy w CC/MCC	0	1.2440	31.4	26.2
735	734	Pelvic evisceration, rad hysterectomy & rad vulvectomy w/o CC/MCC	0	1.2440	31.4	26.2
736	736	Uterine & adnexa proc for ovarian or adnexal malignancy w MCC	0	1.2440	31.4	26.2
737	736	Uterine & adnexa proc for ovarian or adnexal malignancy w CC	0	0.8491	25.2	21.0
738	736	Uterine & adnexa proc for ovarian or adnexal malignancy w/o CC/MCC	0	0.4811	19.5	16.3
739	739	Uterine,adnexa proc for non-ovarian/adnexal malig w MCC	1	1.2440	31.4	26.2
740	739	Uterine,adnexa proc for non-ovarian/adnexal malig w CC	0	1.2440	31.4	26.2
741	739	Uterine,adnexa proc for non-ovarian/adnexal malig w/o CC/MCC	0	1.2440	31.4	26.2
742	742	Uterine & adnexa proc for non-malignancy w CC/MCC	0	0.8491	25.2	21.0
743	742	Uterine & adnexa proc for non-malignancy w/o CC/MCC	0	0.4811	19.5	16.3
744	744	D&C, conization, laparascopy & tubal interruption w CC/MCC	1	0.8491	25.2	21.0
745	744	D&C, conization, laparascopy & tubal interruption w/o CC/MCC	0	0.8491	25.2	21.0
746	746	Vagina, cervix & vulva procedures w CC/MCC	1	1.7291	38.2	31.8
747	746	Vagina, cervix & vulva procedures w/o CC/MCC	0	1.7291	38.2	31.8
748	748	Female reproductive system reconstructive procedures	0	1.2440	31.4	26.2
749	749	Other female reproductive system O.R. procedures w CC/MCC	4	1.2440	31.4	26.2
750	749	Other female reproductive system O.R. procedures w/o CC/MCC	0	1.2440	31.4	26.2
754	754	Malignancy, female reproductive system w MCC	22	1.2440	31.4	26.2
755	754	Malignancy, female reproductive system w CC	21	0.8491	25.2	21.0
756	754	Malignancy, female reproductive system w/o CC/MCC	1	0.4811	19.5	16.3

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
757	757	Infections, female reproductive system w MCC	53	0.7733	24.0	20.0
758	757	Infections, female reproductive system w CC	27	0.7733	24.0	20.0
759	757	Infections, female reproductive system w/o CC/MCC	5	0.7733	24.0	20.0
760	760	Menstrual & other female reproductive system disorders w CC/MCC	0	0.8491	25.2	21.0
761	760	Menstrual & other female reproductive system disorders w/o CC/MCC	0	0.8491	25.2	21.0
765	765	Cesarean section w CC/MCC	0	0.8491	25.2	21.0
766	765	Cesarean section w/o CC/MCC	0	0.8491	25.2	21.0
767	767	Vaginal delivery w sterilization &/or D&C	0	0.8491	25.2	21.0
768	768	Vaginal delivery w O.R. proc except steril &/or D&C	0	0.8491	25.2	21.0
769	769	Postpartum & post abortion diagnoses w O.R. procedure	0	0.8491	25.2	21.0
770	770	Abortion w D&C, aspiration curettage or hysterotomy	0	0.8491	25.2	21.0
774	774	Vaginal delivery w complicating diagnoses	0	0.8491	25.2	21.0
775	775	Vaginal delivery w/o complicating diagnoses	0	0.8491	25.2	21.0
776	776	Postpartum & post abortion diagnoses w/o O.R. procedure	0	0.8491	25.2	21.0
777	777	Ectopic pregnancy	0	0.8491	25.2	21.0
778	778	Threatened abortion	0	0.7733	24.0	20.0
779	779	Abortion w/o D&C	0	0.7733	24.0	20.0
780	780	False labor	0	0.7733	24.0	20.0
781	781	Other antepartum diagnoses w medical complications	1	0.4811	19.5	16.3
782	782	Other antepartum diagnoses w/o medical complications	0	0.4811	19.5	16.3
789	789	Neonates, died or transferred to another acute care facility	0	0.4811	19.5	16.3
790	790	Extreme immaturity or respiratory distress syndrome, neonate	0	0.4811	19.5	16.3
791	791	Prematurity w major problems	0	0.4811	19.5	16.3
792	792	Prematurity w/o major problems	0	0.4811	19.5	16.3
793	793	Full term neonate w major problems	0	0.4811	19.5	16.3
794	794	Neonate w other significant problems	0	0.4811	19.5	16.3
795	795	Normal newborn	0	0.4811	19.5	16.3
799	799	Splenectomy w MCC	0	0.8491	25.2	21.0
800	799	Splenectomy w CC	1	0.8491	25.2	21.0
801	799	Splenectomy w/o CC/MCC	0	0.8491	25.2	21.0
802	802	Other O.R. proc of the blood & blood forming organs w MCC	4	1.2440	31.4	26.2
803	802	Other O.R. proc of the blood & blood forming organs w CC	0	1.2440	31.4	26.2
804	802	Other O.R. proc of the blood & blood forming organs w/o CC/MCC	0	1.2440	31.4	26.2
808	808	Major hematol/immun diag exc sickle cell crisis & coagul w MCC	17	1.2440	31.4	26.2
809	808	Major hematol/immun diag exc sickle cell crisis & coagul w CC	11	0.8491	25.2	21.0
810	808	Major hematol/immun diag exc sickle cell crisis & coagul w/o CC/MCC	1	0.4811	19.5	16.3
811	811	Red blood cell disorders w MCC	44	0.7925	23.1	19.3
812	811	Red blood cell disorders w/o MCC	59	0.5272	20.4	17.0

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
813	813	Coagulation disorders	55	0.8311	23.2	19.3
814	814	Reticuloendothelial & immunity disorders w MCC	16	0.8491	25.2	21.0
815	814	Reticuloendothelial & immunity disorders w CC	7	0.6281	21.7	18.1
816	814	Reticuloendothelial & immunity disorders w/o CC/MCC	1	0.4811	19.5	16.3
820	820	Lymphoma & leukemia w major O.R. procedure w MCC	0	1.2440	31.4	26.2
821	820	Lymphoma & leukemia w major O.R. procedure w CC	0	0.8491	25.2	21.0
822	820	Lymphoma & leukemia w major O.R. procedure w/o CC/MCC	0	0.8491	25.2	21.0
823	823	Lymphoma & non-acute leukemia w other O.R. proc w MCC	11	1.2440	31.4	26.2
824	823	Lymphoma & non-acute leukemia w other O.R. proc w CC	4	0.8491	25.2	21.0
825	823	Lymphoma & non-acute leukemia w other O.R. proc w/o CC/MCC	0	0.8491	25.2	21.0
826	826	Myeloprolif disord or poorly diff neopl w maj O.R. proc w MCC	1	1.7291	38.2	31.8
827	826	Myeloprolif disord or poorly diff neopl w maj O.R. proc w CC	1	1.7291	38.2	31.8
828	826	Myeloprolif disord or poorly diff neopl w maj O.R. proc w/o CC/MCC	0	1.7291	38.2	31.8
829	829	Myeloprolif disord or poorly diff neopl w other O.R. proc w CC/MCC	7	1.7291	38.2	31.8
830	829	Myeloprolif disord or poorly diff neopl w other O.R. proc w/o CC/MCC	0	1.7291	38.2	31.8
834	834	Acute leukemia w/o major O.R. procedure w MCC	14	0.8491	25.2	21.0
835	834	Acute leukemia w/o major O.R. procedure w CC	14	0.8491	25.2	21.0
836	834	Acute leukemia w/o major O.R. procedure w/o CC/MCC	2	0.8491	25.2	21.0
837	837	Chemo w acute leukemia as sdx or w high dose chemo agent w MCC	0	1.7291	38.2	31.8
838	837	Chemo w acute leukemia as sdx or w high dose chemo agent w CC	0	1.7291	38.2	31.8
839	837	Chemo w acute leukemia as sdx or w high dose chemo agent w/o CC/MCC	0	1.7291	38.2	31.8
840	840	Lymphoma & non-acute leukemia w MCC	133	0.9135	23.1	19.3
841	840	Lymphoma & non-acute leukemia w CC	63	0.7159	19.7	16.4
842	840	Lymphoma & non-acute leukemia w/o CC/MCC	7	0.6281	21.7	18.1
843	843	Other myeloprolif dis or poorly diff neopl diag w MCC	20	0.8491	25.2	21.0
844	843	Other myeloprolif dis or poorly diff neopl diag w CC	10	0.6281	21.7	18.1
845	843	Other myeloprolif dis or poorly diff neopl diag w/o CC/MCC	3	0.6281	21.7	18.1
846	846	Chemotherapy w/o acute leukemia as secondary diagnosis w MCC	49	1.4611	30.0	25.0
847	846	Chemotherapy w/o acute leukemia as secondary diagnosis w CC	43	1.0744	23.8	19.8
848	846	Chemotherapy w/o acute leukemia as secondary diagnosis w/o CC/MCC	0	1.0744	23.8	19.8
849	849	Radiotherapy	141	0.7878	21.6	18.0
853	853	Infectious & parasitic diseases w O.R. procedure w MCC	840	1.7691	37.3	31.1
854	853	Infectious & parasitic diseases w O.R. procedure w CC	104	1.1402	33.0	27.5

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
855	853	Infectious & parasitic diseases w O.R. procedure w/o CC/MCC	5	1.1402	33.0	27.5
856	856	Postoperative or post-traumatic infections w O.R. proc w MCC	303	1.5454	36.8	30.7
857	856	Postoperative or post-traumatic infections w O.R. proc w CC	213	1.0591	32.7	27.3
858	856	Postoperative or post-traumatic infections w O.R. proc w/o CC/MCC	32	0.8833	26.8	22.3
862	862	Postoperative & post-traumatic infections w MCC	1,168	0.9532	25.3	21.1
863	862	Postoperative & post-traumatic infections w/o MCC	1,240	0.6971	24.0	20.0
864	864	Fever of unknown origin	11	0.4811	19.5	16.3
865	865	Viral illness w MCC	36	0.7928	22.2	18.5
866	865	Viral illness w/o MCC	14	0.6281	21.7	18.1
867	867	Other infectious & parasitic diseases diagnoses w MCC	359	1.1181	23.3	19.4
868	867	Other infectious & parasitic diseases diagnoses w CC	86	0.7342	22.6	18.8
869	867	Other infectious & parasitic diseases diagnoses w/o CC/MCC	7	0.4811	19.5	16.3
870	870	Septicemia w MV 96+ hours	902	2.2083	33.1	27.6
871	871	Septicemia w/o MV 96+ hours w MCC	4,512	0.8625	23.4	19.5
872	871	Septicemia w/o MV 96+ hours w/o MCC	1,610	0.6514	21.8	18.2
876	876	O.R. procedure w principal diagnoses of mental illness	12	0.6281	21.7	18.1
880	880	Acute adjustment reaction & psychosocial dysfunction	11	0.4811	19.5	16.3
881	881	Depressive neuroses	15	0.6281	21.7	18.1
882	882	Neuroses except depressive	16	0.4811	19.5	16.3
883	883	Disorders of personality & impulse control	12	0.8491	25.2	21.0
884	884	Organic disturbances & mental retardation	147	0.5119	25.5	21.3
885	885	Psychoses	1,220	0.4153	23.8	19.8
886	886	Behavioral & developmental disorders	18	0.4811	19.5	16.3
887	887	Other mental disorder diagnoses	0	0.6281	21.7	18.1
894	894	Alcohol/drug abuse or dependence, left ama	0	0.6281	21.7	18.1
895	895	Alcohol/drug abuse or dependence w rehabilitation therapy	2	0.4811	19.5	16.3
896	896	Alcohol/drug abuse or dependence w/o rehabilitation therapy w MCC	7	1.2440	31.4	26.2
897	896	Alcohol/drug abuse or dependence w/o rehabilitation therapy w/o MCC	17	0.4811	19.5	16.3
901	901	Wound debridements for injuries w MCC	220	1.4971	35.9	29.9
902	901	Wound debridements for injuries w CC	129	1.0444	30.1	25.1
903	901	Wound debridements for injuries w/o CC/MCC	23	0.8491	25.2	21.0
904	904	Skin grafts for injuries w CC/MCC	78	1.3240	35.6	29.7
905	904	Skin grafts for injuries w/o CC/MCC	6	0.8491	25.2	21.0
906	906	Hand procedures for injuries	1	1.7291	38.2	31.8
907	907	Other O.R. procedures for injuries w MCC	91	1.6121	37.5	31.3
908	907	Other O.R. procedures for injuries w CC	63	1.1164	34.1	28.4
909	907	Other O.R. procedures for injuries w/o CC/MCC	6	1.1164	34.1	28.4
913	913	Traumatic injury w MCC	38	0.7603	25.1	20.9
914	913	Traumatic injury w/o MCC	66	0.6102	22.2	18.5
915	915	Allergic reactions w MCC	0	0.4811	19.5	16.3
916	915	Allergic reactions w/o MCC	0	0.4811	19.5	16.3

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
917	917	Poisoning & toxic effects of drugs w MCC	8	0.4811	19.5	16.3
918	917	Poisoning & toxic effects of drugs w/o MCC	9	0.4811	19.5	16.3
919	919	Complications of treatment w MCC	1,245	1.0831	26.9	22.4
920	919	Complications of treatment w CC	847	0.8494	26.0	21.7
921	919	Complications of treatment w/o CC/MCC	118	0.6108	20.2	16.8
922	922	Other injury, poisoning & toxic effect diag w MCC	7	0.8491	25.2	21.0
923	922	Other injury, poisoning & toxic effect diag w/o MCC	11	0.6281	21.7	18.1
927	927	Extensive burns or full thickness burns w MV 96+ hrs w skin graft	1	1.7291	38.2	31.8
928	928	Full thickness burn w skin graft or inhal inj w CC/MCC	9	1.2440	31.4	26.2
929	928	Full thickness burn w skin graft or inhal inj w/o CC/MCC	2	0.6281	21.7	18.1
933	933	Extensive burns or full thickness burns w MV 96+ hrs w/o skin graft	10	1.2440	31.4	26.2
934	934	Full thickness burn w/o skin graft or inhal inj	40	0.7641	24.2	20.2
935	935	Non-extensive burns	46	0.7746	24.5	20.4
939	939	O.R. proc w diagnoses of other contact w health services w MCC	270	1.3259	33.7	28.1
940	939	O.R. proc w diagnoses of other contact w health services w CC	136	0.9894	30.6	25.5
941	939	O.R. proc w diagnoses of other contact w health services w/o CC/MCC	15	0.8491	25.2	21.0
945	945	Rehabilitation w CC/MCC	2,223	0.6072	22.1	18.4
946	945	Rehabilitation w/o CC/MCC	428	0.4261	18.9	15.8
947	947	Signs & symptoms w MCC	58	0.6412	22.1	18.4
948	947	Signs & symptoms w/o MCC	70	0.5685	22.1	18.4
949	949	Aftercare w CC/MCC	3,824	0.6962	22.5	18.8
950	949	Aftercare w/o CC/MCC	551	0.4952	19.2	16.0
951	951	Other factors influencing health status	28	1.3205	27.9	23.3
955	955	Craniotomy for multiple significant trauma	0	1.7291	38.2	31.8
956	956	Limb reattachment, hip & femur proc for multiple significant trauma	0	0.8491	25.2	21.0
957	957	Other O.R. procedures for multiple significant trauma w MCC	1	1.2440	31.4	26.2
958	957	Other O.R. procedures for multiple significant trauma w CC	1	0.4811	19.5	16.3
959	957	Other O.R. procedures for multiple significant trauma w/o CC/MCC	0	0.4811	19.5	16.3
963	963	Other multiple significant trauma w MCC	15	0.8491	25.2	21.0
964	963	Other multiple significant trauma w CC	5	0.6281	21.7	18.1
965	963	Other multiple significant trauma w/o CC/MCC	3	0.4811	19.5	16.3
969	969	HIV w extensive O.R. procedure w MCC	14	1.2440	31.4	26.2
970	969	HIV w extensive O.R. procedure w/o MCC	3	1.2440	31.4	26.2
974	974	HIV w major related condition w MCC	196	0.9948	21.9	18.3
975	974	HIV w major related condition w CC	85	0.6370	18.3	15.3
976	974	HIV w major related condition w/o CC/MCC	16	0.6281	21.7	18.1
977	977	HIV w or w/o other related condition	45	0.6822	19.0	15.8
981	981	Extensive O.R. procedure unrelated to principal diagnosis w MCC	1,161	2.3267	43.1	35.9

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Description	FY 2007 LTCH Cases	Relative Weight	Geo-metric Average Length of Stay	Short-Stay Outlier (SSO) Threshold
982	981	Extensive O.R. procedure unrelated to principal diagnosis w CC	293	1.4598	35.5	29.6
983	981	Extensive O.R. procedure unrelated to principal diagnosis w/o CC/MCC	26	1.1497	31.9	26.6
984	984	Prostatic O.R. procedure unrelated to principal diagnosis w MCC	16	1.2440	31.4	26.2
985	984	Prostatic O.R. procedure unrelated to principal diagnosis w CC	9	1.2440	31.4	26.2
986	984	Prostatic O.R. procedure unrelated to principal diagnosis w/o CC/MCC	0	1.2440	31.4	26.2
987	987	Non-extensive O.R. proc unrelated to principal diagnosis w MCC	423	1.7625	36.7	30.6
988	987	Non-extensive O.R. proc unrelated to principal diagnosis w CC	219	1.1474	33.9	28.3
989	987	Non-extensive O.R. proc unrelated to principal diagnosis w/o CC/MCC	10	0.8491	25.2	21.0
998	998	Ungroupable	0	0.0000	0.0	0.0
999	999	Principal diagnosis invalid as discharge diagnosis	0	0.0000	0.0	0.0

[FR Doc. E9–12911 Filed 5–29–09; 4:15 pm]
BILLING CODE 4120–01–C

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–8077]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be

suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Virginia:				
Crewe, Town of, Nottoway County	510264	April 16, 1998, Emerg; —, Reg; June 2, 2009, Susp.	June 2, 2009	June 2, 2009
Nottoway County, Unincorporated Areas.	510307	May 7, 1975, Emerg; September 1, 1987, Reg; June 2, 2009, Susp.	.....*do	Do.
Region IV				
Florida:				
Bay County, Unincorporated Areas	120004	May 12, 1975, Emerg; July 2, 1981, Reg; June 2, 2009, Susp.	.....do	Do.
Callaway, City of, Bay County	120005	January 13, 1975, Emerg; July 16, 1980, Reg; June 2, 2009, Susp.	.....do	Do.
Cedar Grove, Town of, Bay County	120006	May 16, 1975, Emerg; January 25, 1980, Reg; June 2, 2009, Susp.	.....do	Do.
Lynn Haven, City of, Bay County	120009	September 6, 1974, Emerg; June 1, 1977, Reg; June 2, 2009, Susp.	.....do	Do.
Mexico Beach, Town of, Bay County	120010	September 18, 1970, Emerg; July 18, 1977, Reg; June 2, 2009, Susp.	.....do	Do.
Panama City, City of, Bay County	120012	September 6, 1974, Emerg; July 18, 1977, Reg; June 2, 2009, Susp.	.....do	Do.
Panama City Beach, City of, Bay County.	120013	December 17, 1971, Emerg; June 1, 1977, Reg; June 2, 2009, Susp.	.....do	Do.
Parker, City of, Bay County	120011	May 5, 1975, Emerg; August 1, 1980, Reg; June 2, 2009, Susp.	.....do	Do.
Springfield, City of, Bay County	120014	May 1, 1975, Emerg; August 17, 1981, Reg; June 2, 2009, Susp.	.....do	Do.
Georgia:				
Clarkesville, City of, Habersham County	130103	April 2, 1976, Emerg; February 17, 1988, Reg; June 2, 2009, Susp.	.....do	Do.
Cornelia, City of, Habersham County	130329	August 30, 1976, Emerg; August 1, 1986, Reg; June 2, 2009, Susp.	.....do	Do.
Habersham County, Unincorporated Areas.	130458	September 23, 1976, Emerg; April 2, 1991, Reg; June 2, 2009, Susp.	.....do	Do.
Tallulah Falls, Town of, Habersham County.	130380	December 29, 1980, Emerg; August 13, 1982, Reg; June 2, 2009, Susp.	.....do	Do.
North Carolina:				
Burnsville, Town of, Yancey County	370373	July 24, 1975, Emerg; April 17, 1984, Reg; June 2, 2009, Susp.	.....do	Do.
Hot Springs, Town of, Madison County	370153	November 17, 1977, Emerg; July 5, 1982, Reg; June 2, 2009, Susp.	.....do	Do.
Madison County, Unincorporated Areas	370152	November 26, 1973, Emerg; September 2, 1982, Reg; June 2, 2009, Susp.	.....do	Do.
Mars Hill, Town of, Madison County	370385	October 4, 1979, Emerg; August 19, 1987, Reg; June 2, 2009, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Marshall, Town of, Madison County	370154	November 23, 1973, Emerg; May 15, 1978, Reg; June 2, 2009, Susp.	.....do	Do.
Yancey County, Unincorporated Areas	370261	March 29, 1978, Emerg; April 17, 1984, Reg; June 2, 2009, Susp.	.....do	Do.
Ohio:				
Cardington, Village of, Morrow County	390652	June 13, 1975, Emerg; November 2, 1984, Reg; June 2, 2009, Susp.	.....do	Do.
Morrow County, Unincorporated Areas	390868	July 23, 1987, Emerg; April 1, 1992, Reg; June 2, 2009, Susp.	.....do	Do.
Mt. Gilead, Village of, Morrow County	390424	April 29, 1975, Emerg; August 19, 1987, Reg; June 2, 2009, Susp.	.....do	Do.
Wisconsin:				
Fort Atkinson, City of, Jefferson County	555554	November 13, 1970, Emerg; August 6, 1971, Reg; June 2, 2009, Susp.	.....do	Do.
Jefferson, City of, Jefferson County	555561	April 23, 1971, Emerg; May 26, 1972, Reg; June 2, 2009, Susp.	.....do	Do.
Jefferson County, Unincorporated Areas.	550191	April 2, 1971, Emerg; September 29, 1978, Reg; June 2, 2009, Susp.	.....do	Do.
Johnson Creek, Village of, Jefferson County.	550194	February 13, 1976, Emerg; September 30, 1982, Reg; June 2, 2009, Susp.	.....do	Do.
Lac La Belle, Village of, Jefferson County.	550565	May 25, 1976, Emerg; January 18, 1984, Reg; June 2, 2009, Susp.	.....do	Do.
Lake Mills, City of, Jefferson County	550195	September 10, 1975, Emerg; July 2, 1987, Reg; June 2, 2009, Susp.	.....do	Do.
Palmyra, Village of, Jefferson County	550196	May 13, 1975, Emerg; May 3, 1990, Reg; June 2, 2009, Susp.	.....do	Do.
Sullivan, Village of, Jefferson County	550197	July 10, 1975, Emerg; September 18, 1985, Reg; June 2, 2009, Susp.	.....do	Do.
Waterloo, City of, Jefferson County	550198	July 25, 1975, Emerg; September 18, 1985, Reg; June 2, 2009, Susp.	.....do	Do.
Waterloo, City of, Dodge County	550107	May 23, 1975, Emerg; April 1, 1981, Reg; June 2, 2009, Susp.	.....do	Do.
Whitewater, City of, Jefferson County	550200	March 27, 1975, Emerg; June 1, 1982, Reg; June 2, 2009, Susp.	.....do	Do.
Region VI				
Texas:				
Allen, City of, Collin County	480131	July 15, 1975, Emerg; June 1, 1978, Reg; June 2, 2009, Susp.	.....do	Do.
Carrollton, City of, Collin County	480167	May 27, 1975, Emerg; July 16, 1980, Reg; June 2, 2009, Susp.	.....do	Do.
Celina, City of, Collin County	480133	May 27, 1975, Emerg; November 1, 1979, Reg; June 2, 2009, Susp.	.....do	Do.
Collin County, Unincorporated Areas	480130	June 16, 1981, Emerg; June 16, 1981, Reg; June 2, 2009, Susp.	.....do	Do.
Fairview, Town of, Collin County	481069	January 18, 1977, Emerg; November 1, 1979, Reg; June 2, 2009, Susp.	.....do	Do.
Frisco, City of, Collin County	480134	October 7, 1975, Emerg; June 18, 1980, Reg; June 2, 2009, Susp.	.....do	Do.
Lavon, Town of, Collin County	481313	NA, Emerg; May 13, 1991, Reg; June 2, 2009, Susp.	.....do	Do.
Lucas, City of, Collin County	481545	July 3, 1979, Emerg; July 3, 1979, Reg; June 2, 2009, Susp.	.....do	Do.
McKinney, City of, Collin County	480135	April 9, 1975, Emerg; June 18, 1980, Reg; June 2, 2009, Susp.	.....do	Do.
Murphy, City of, Collin County	480137	August 7, 1975, Emerg; April 1, 1980, Reg; June 2, 2009, Susp.	.....do	Do.
New Hope, City of, Collin County	480138	NA, Emerg; April 19, 1996, Reg; June 2, 2009, Susp.	.....do	Do.
Parker, City of, Collin County	480139	May 26, 1977, Emerg; August 15, 1979, Reg; June 2, 2009, Susp.	.....do	Do.
Plano, City of, Collin County	480140	July 19, 1974, Emerg; January 2, 1980, Reg; June 2, 2009, Susp.	.....do	Do.
Prosper, City of, Collin County	480141	December 2, 1980, Emerg; May 4, 1982, Reg; June 2, 2009, Susp.	.....do	Do.
Richardson, City of, Collin County	480184	February 20, 1975, Emerg; December 4, 1979, Reg; June 2, 2009, Susp.	.....do	Do.
Sachse, City of, Collin County	480186	July 25, 1975, Emerg; September 1, 1978, Reg; June 2, 2009, Susp.	.....do	Do.
Van Alstyne, Town of, Collin County	481620	NA, Emerg; November 11, 1994, Reg; June 2, 2009, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Westminster, Town of, Collin County	480758	NA, Emerg; May 10, 1993, Reg; June 2, 2009, Susp.	.....do	Do.
Region VII				
Kansas:				
Andover, City of, Butler County	200383	February 7, 1977, Emerg; December 4, 1986, Reg; June 2, 2009, Susp.	.....do	Do.
Augusta, City of, Butler County	200038	June 25, 1975, Emerg; August 15, 1980, Reg; June 2, 2009, Susp.	.....do	Do.
Butler County, Unincorporated Areas	200037	June 23, 1975, Emerg; March 2, 1981, Reg; June 2, 2009, Susp.	.....do	Do.
Douglass, City of, Butler County	200489	August 21, 2003, Emerg; September 1, 2004, Reg; June 2, 2009, Susp.	.....do	Do.
Rose Hill, City of, Butler County	200454	April 20, 1976, Emerg; August 24, 1981, Reg; June 2, 2009, Susp.	.....do	Do.
Missouri:				
Benton County, Unincorporated Areas	290027	September 24, 1986, Emerg; March 1, 1987, Reg; June 2, 2009, Susp.	.....do	Do.
Warsaw, City of, Benton County	290030	August 25, 1975, Emerg; August 4, 1987, Reg; June 2, 2009, Susp.	.....do	Do.
Region VIII				
South Dakota:				
Beadle County, Unincorporated Areas	460251	May 11, 1995, Emerg; October 1, 1997, Reg; June 2, 2009, Susp.	.....do	Do.
Cavour, Town of, Beadle County	461212	March 14, 1997, Emerg; June 8, 1998, Reg; June 2, 2009, Susp.	.....do	Do.
Huron, City of, Beadle County	460003	May 24, 1974, Emerg; July 16, 1987, Reg; June 2, 2009, Susp.	.....do	Do.

* do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp—Suspension.

Dated: May 22, 2009.

Deborah Ingram,

Acting Deputy Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E9–12857 Filed 6–2–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2008–0020]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified BFEs will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective dates for these modified BFEs are indicated on the following table and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this final rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modified BFEs are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood

insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p.376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Elmore (FEMA Docket No.: B–1030).	City of Millbrook (08–04–3794P).	December 11, 2008, December 18, 2008, *The Millbrook Independent*.	The Honorable Al Kelley, Mayor, City of Millbrook, 5010 Brownswood Circle, Millbrook, AL 36054.	April 17, 2009	010370
Montgomery (FEMA Docket No.: B–1030).	City of Montgomery (07–04–3037P).	December 11, 2008, December 18, 2008, *Montgomery Advertiser*.	The Honorable Bobby N. Bright, Mayor, City of Montgomery, P.O. Box 1111, Montgomery, AL 36101.	April 17, 2009	010174
Arizona:					
Apache (FEMA Docket No.: B–1033).	Town of Eager (08–09–0712P).	October 24, 2008, October 31, 2008, *White Mountain Independent*.	The Honorable Bill Greenwood, Town Manager, Town of Eager, P.O. Box 1300, Eager, AZ 85925.	March 2, 2009	040103
Coconino (FEMA Docket No.: B–1030).	City of Flagstaff (08–09–1360P).	December 15, 2008, December 22, 2008, *Arizona Daily Sun*.	The Honorable Sara Presler, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, AZ 86001.	November 28, 2008	040020
Maricopa (FEMA Docket No.: B–1033).	City of Phoenix (08–09–1412P).	December 18, 2008, December 25, 2008, *Arizona Business Gazette*.	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003.	November 28, 2008	040051
Arkansas: Craighead (FEMA Docket No.: B–1042).	City of Jonesboro (07–06–2616P).	August 11, 2008, August 18, 2008, *The Jonesboro Sun*.	The Honorable Doug Forman, Mayor, City of Jonesboro, 515 West Washington Avenue, Jonesboro, AR 72401.	December 16, 2008	050048
California: Riverside (FEMA Docket No.: B–1039).	City of La Quinta (08–09–0307P).	January 10, 2008, January 17, 2008, *The Press Enterprise*.	The Honorable Donald Adolph, Mayor, City of La Quinta, P.O. Box 1504, La Quinta, CA 92247.	December 18, 2007	060709
Colorado:					
Arapahoe (FEMA Docket No.: B–1023).	Unincorporated areas of Arapahoe County (08–08–0760P).	November 14, 2008, November 21, 2008, *Rocky Mountain News*.	The Honorable Susan Beckman, Chairman, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80166–0001.	March 23, 2009	080011
Arapahoe (FEMA Docket No.: B–1027).	City of Littleton (08–08–0251P).	November 13, 2008, November 20, 2008, *Littleton Independent*.	The Honorable Doug Clark, Mayor, City of Littleton, 2255 West Berry Avenue, Littleton, CO 80165.	March 20, 2009	080017
Denver (FEMA Docket No.: B–1023).	City and County of Denver (08–08–0760P).	November 14, 2008, November 21, 2008, *Rocky Mountain News*.	The Honorable John W. Hickenlooper, Mayor, City and County of Denver, 1437 Bannock Street, Suite 350, Denver, CO 80202.	March 23, 2009	080046
Denver (FEMA Docket No.: B–1039).	City and County of Denver (08–08–0948P).	December 17, 2008, December 24, 2008, *Rocky Mountain News*.	The Honorable John W. Hickenlooper, Mayor, City and County of Denver, 1437 Bannock Street, Suite 350, Denver, CO 80202.	December 9, 2008	080046
Douglas (FEMA Docket No.: B–1033).	Unincorporated areas of Douglas County (07–08–0979P).	December 4, 2008, December 11, 2008, *Douglas County News-Press*.	The Honorable Melanie A. Worley, Chairperson, Douglas County Board of County Commissioners, 100 Third Street, Castle Rock, CO 80104.	April 10, 2009	080049
El Paso (FEMA Docket No.: B–1027).	Unincorporated areas of El Paso County (08–08–0381P).	November 26, 2008, December 3, 2008, *Tri Lakes Tribune*.	The Honorable Dennis Hisey, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, CO 80903.	April 2, 2009	080059
El Paso (FEMA Docket No.: B–1027).	Town of Monument (08–08–0381P).	November 26, 2008, December 3, 2008, *Tri Lakes Tribune*.	The Honorable Catherine Green, Manager, Town of Monument, P.O. Box 325, Monument, CO 80132.	April 2, 2009	080064
El Paso (FEMA Docket No.: B–1033).	Town of Palmer Lake (07–08–0979P).	December 3, 2008, December 10, 2008, *The Tribune*.	The Honorable John Cressman, Mayor, Town of Palmer Lake, P.O. Box 208, Palmer Lake, CO 80133.	April 10, 2009	080065

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Garfield (FEMA Docket No.: B–1030).	Unincorporated areas of Garfield County (07–08–0852P).	August 14, 2008, August 21, 2008, *Citizen Telegram*.	The Honorable Trési Houpt, Chairman, Garfield County Board of Commissioners, 108 Eighth Street, Glenwood Springs, CO 81601.	December 19, 2008	080205
Garfield (FEMA Docket No.: B–1030).	City of Rifle (07–08–0852P).	August 14, 2008, August 21, 2008, *Citizen Telegram*.	The Honorable John Hier, City Manager, City of Rifle, 202 Railroad Avenue, Rifle, CO 81650.	December 19, 2008	085078
Jefferson (FEMA Docket No.: B–1027).	City of Westminster (08–08–0666P).	November 13, 2008, November 20, 2008, *Westminster Window*.	The Honorable Nancy McNally, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	March 20, 2009	080008
Connecticut:					
New Haven (FEMA Docket No.: B–1042).	Town of Hamden (08–01–0419P).	July 24, 2008, July 31, 2008, *New Haven Register*.	The Honorable Craig Henrici, Mayor, Town of Hamden, Town Hall, 2750 Dixwell Avenue, Hamden, CT 06518.	July 30, 2008	090078
Florida:					
Collier (FEMA Docket No.: B–1030).	City of Marco Island (08–04–5939P).	December 8, 2008, December 15, 2008, *Naples Daily News*.	The Honorable William D. Trotter, Chairman, City Council City of Marco Island, 50 Bald Eagle Drive, Marco Island, FL 34145.	April 14, 2009	120426
Duval (FEMA Docket No.: B–1033).	City of Jacksonville Beach (08–04–6323P).	December 26, 2008, January 2, 2009, *The Beaches Leader*.	The Honorable Fland Sharp, Mayor, City of Jacksonville Beach, 11 North Third Street, Jacksonville Beach, FL 32250.	December 22, 2008	120078
Orange (FEMA Docket No.: B–1027).	City of Orlando (08–04–3498P).	November 13, 2008, November 20, 2008, *Orlando Weekly*.	The Honorable John Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32802.	March 20, 2009	120186
Walton (FEMA Docket No.: B–1027).	Unincorporated areas of Walton County (08–04–3897P).	November 13, 2008, November 20, 2008, *The DeFuniak Springs Herald Breeze*.	The Honorable Larry Jones, Chairman, Walton County Board of Commissioners, 117 Montgomery Circle, DeFuniak Springs, FL 32435.	March 20, 2009	120317
Georgia:					
Barrow (FEMA Docket No.: B–1033).	Unincorporated areas of Barrow County (08–04–5370P).	December 10, 2008, December 17, 2008, *The Barrow County News*.	Mr. Douglas H. Garrison, Chairman, Barrow County Board of Commissioners, 233 East Broad Street, Winder, GA 30680.	April 16, 2009	130497
Hall (FEMA Docket No.: B–1033).	Unincorporated areas of Hall County (08–04–4322P).	December 11, 2008, December 18, 2008, *Gainesville Times*.	Mr. Tom Oliver, Chairman, Hall County Board of Commissioners, P.O. Box 1435, Gainesville, GA 30503.	April 17, 2009	130466
Jackson (FEMA Docket No.: B–1033).	Unincorporated areas of Jackson County (08–04–4322P).	December 10, 2008, December 17, 2008, *The Jackson Herald*.	Ms. Pat Bell, Chairperson, Jackson County Board of Commissioners, 67 Athens Street, Jefferson, GA 30549.	April 17, 2009	130345
Jackson (FEMA Docket No.: B–1033).	Unincorporated areas of Jackson County (08–04–5370P).	December 10, 2008, December 17, 2008, *The Jackson Herald*.	Ms. Pat Bell, Chairman, Jackson County Board of Commissioners, 67 Athens Street, Jefferson, GA 30549.	April 16, 2009	130345
Idaho:					
Teton (FEMA Docket No.: B–1042).	Unincorporated areas of Teton County (07–10–0061P).	March 20, 2008, March 27, 2009, *Teton Valley News*.	The Honorable Larry Young, Chairman, Teton County Board of Commissioners, P.O. Box 756, Driggs, ID 83422.	March 13, 2008	160230
Teton (FEMA Docket No.: B–1042).	Unincorporated areas of Teton County (07–10–0770P).	May 8, 2008, May 15, 2008, *Teton Valley News*.	The Honorable Larry Young, Chairman, Teton County Board of Commissioners, P.O. Box 756, Driggs, ID 83422.	September 12, 2008	160230
Illinois:					
DuPage (FEMA Docket No.: B–1036).	Unincorporated areas of DuPage County (08–05–0519P).	March 7, 2008, March 14, 2008, *Daily Herald*.	The Honorable Robert J. Schillerstorm, Chairman, DuPage County Board, 505 North County Farm Road, Wheaton, IL 60187.	July 14, 2008	170197
DuPage (FEMA Docket No.: B–1036).	City of Emhurst (08–05–0519P).	March 7, 2008, March 14, 2008, *Daily Herald*.	The Honorable Thomas D. Marcucci, Mayor, City of Elmhurst, 209 North York Street, Elmhurst, IL 60126.	July 14, 2008	170205
Kansas: Sedgwick (FEMA Docket No.: B–1027).	City of Wichita (09–07–0232P).	November 24, 2008, December 1, 2008, *The Wichita Eagle*.	The Honorable Carl Brewer, Mayor, City of Wichita, 455 North Main Street, Wichita, KS 67202.	November 14, 2008	200328
Kentucky: Louisville-Jefferson (FEMA Docket No.: B–1044).	Louisville-Jefferson County Metropolitan Government (08–04–3793P).	November 14, 2008, November 21, 2008, *The Courier Journal*.	The Honorable Jerry E. Abramson, Mayor, Louisville-Jefferson County, Metropolitan Government, 527 West Jefferson Street, Louisville, KY 40202.	March 23, 2009	210120
Maryland: Carroll (FEMA Docket No.: B–1027).	Unincorporated areas of Carroll County (08–03–0921P).	November 12, 2008, November 19, 2008, *Carroll County Times*.	The Honorable Julia Gouge, Commissioner, Carroll County Commissioners, 225 North Center Street, Westminster, MD 21157.	March 19, 2009	240015
Missouri:					
Phelps (FEMA Docket No.: B–1039).	City of Rolla (08–07–0803P).	October 10, 2008, October 16, 2008, *Rolla Daily News*.	The Honorable William Jenks III, Mayor, City of Rolla, P.O. Box 979, Rolla, MO 65401.	February 20, 2009	290285

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Stoddard (FEMA Docket No.: B–1030).	City of Dexter (07–07–1785P).	February 14, 2008, February 21, 2008, *Daily Statesman*.	The Honorable Joe E. Weber, Mayor, City of Dexter, 301 East Stoddard Street, Dexter, MO 63841.	May 22, 2008	290424
Stoddard (FEMA Docket No.: B–1030).	Unincorporated areas of Stoddard County (07–07–1785P).	February 14, 2008, February 21, 2008, *Daily Statesman*.	Mr. Greg Mathis, Presiding Commissioner, Stoddard County, P.O. Box 110, Bloomfield, MO 63825–0110.	May 22, 2008	290845
New Hampshire:					
Cheshire (FEMA Docket No.: B–1030).	City of Keene (08–01–0182P).	February 28, 2008, March 6, 2008, *The Keene Sentinel*.	The Honorable Philip Dale Pregent, Mayor, City of Keene, Three Washington Street, Keene, NH 03431.	March 20, 2008	330023
New York:					
Seneca (FEMA Docket No.: B–1019).	Town of Seneca Falls (08–02–1344P).	October 9, 2008, October 16, 2008, *Reveille Between the Lakes*.	The Honorable Duane Moore, Councilman, Town of Seneca Falls, 32 State Street, Seneca Falls, NY 13148.	April 2, 2009	360756
North Carolina:					
Onslow (FEMA Docket No.: B–1036).	City of Jacksonville (08–04–3999P).	*The Daily News,* December 23, 2008, December 30, 2008.	The Honorable Sammy Phillips, Mayor, City of Jacksonville, P.O. Box 128, Jacksonville, NC 28541.	January 14, 2009	370178
Randolph (FEMA Docket No.: B–1030).	City of Archdale (08–04–4163P).	December 4, 2008, December 11, 2008, *The Archdale Trinity-News*.	The Honorable Bert Lance-Stone, Mayor, City of Archdale, 307 Balfour Drive, P.O. Box 14068, Archdale, NC 27263.	November 13, 2008	370273
Wake (FEMA Docket No.: B–1027).	Wake County (Unincorporated Areas) (08–04–0177P).	November 12, 2008, November 19, 2008, *The News and Observer*.	Mr. David C. Cooke, Manager, Wake County, P.O. Box 550, Raleigh, NC 27602.	March 19, 2009	370368
Wake (FEMA Docket No.: B–1027).	Town of Knightdale (08–04–0177P).	November 12, 2008, November 19, 2008, *Eastern Wake News*.	The Honorable Russell B. Killen, Mayor, Town of Knightdale, 1103 Belfry Drive, Knightdale, NC 27545.	March 19, 2009	370241
Wake (FEMA Docket No.: B–1027).	City of Raleigh (08–04–0177P).	November 12, 2008, November 19, 2008, *The News and Observer*.	The Honorable Charles Meeker, Mayor, City of Raleigh, P.O. Box 590, Raleigh, NC 27602.	March 19, 2009	370243
Ohio:					
Licking (FEMA Docket No.: B–1033).	City of Newark (08–05–4680P).	December 8, 2008, December 15, 2008, *The Newark Advocate*.	The Honorable Bob Diebold, Mayor, City of Newark, 40 West Main Street, Newark, OH 43055.	April 14, 2009	390335
Montgomery (FEMA Docket No.: B–1039).	Unincorporated areas of Montgomery County (08–05–2057P).	July 23, 2008, July 30, 2008, *Englewood Independent*.	The Honorable Deborah A. Lieberman, County Commissioner, 451 West Third Street, 11th Floor, Dayton, OH 45422.	November 27, 2008	390775
South Carolina:					
Beaufort (FEMA Docket No.: B–1027).	Unincorporated areas of Beaufort County (08–04–4422P).	November 21, 2008, November 28, 2008, *The Beaufort Gazette*.	The Honorable Gary T. Kubic, Beaufort County Administrator, P.O. Box 1228, Beaufort, SC 29901–1228.	March 30, 2009	450025
Jasper (FEMA Docket No.: B–1027).	Town of Hardeeville (08–04–4422P).	November 19, 2008, November 26, 2008, *Jasper County Sun*.	The Honorable Bronco Bostick, Mayor, Town of Hardeeville, 205 East Main Street, Hardeeville, SC 29927.	March 30, 2009	450113
Jasper (FEMA Docket No.: B–1027).	Unincorporated areas of Jasper County (08–04–4422P).	November 19, 2008, November 26, 2008, *Jasper County Sun*.	The Honorable George Hood, Chairman, Jasper County Council, P.O. Box 1149, Ridgeland, SC 29936.	March 30, 2009	450112
Tennessee:					
Sumner (FEMA Docket No.: B–1027).	City of Gallatin (08–04–5293P).	November 13, 2008, November 20, 2008, *The Gallatin Newspaper*.	The Honorable Jo Ann Graves, Mayor, City of Gallatin, 132 West Main Street, Gallatin, TN 37066.	March 20, 2009	470185
Texas:					
Bexar (FEMA Docket No.: B–1027).	City of San Antonio (08–06–1354P).	November 12, 2008, November 19, 2008, *San Antonio Express News*.	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	March 19, 2009	480045
Brazos (FEMA Docket No.: B–1027).	City of College Station (08–06–2506P).	November 14, 2008, November 21, 2008, *Bryan College Station Eagle*.	The Honorable Ben White, Mayor, City of College Station, P.O. Box 9960, College Station, TX 77842.	March 23, 2009	480083
Caldwell (FEMA Docket No.: B–1036).	Unincorporated areas of Caldwell County (07–06–2617P).	October 9, 2008, October 16, 2008, *Lockhart Post Register*.	The Honorable H. T. Wright, Caldwell County Judge, 110 South Main Street, Lockhart, TX 78644.	February 20, 2009	480094
Caldwell (FEMA Docket No.: B–1036).	Town of Martindale (07–06–2617P).	October 9, 2008, October 16, 2008, *Lockhart Post Register*.	The Honorable Patricia Peterson, Mayor, Town of Martindale, P.O. Box 365, Martindale, TX 78655.	February 20, 2009	481587
Collin (FEMA Docket No.: B–1033).	Unincorporated areas of Collin County (08–06–1493P).	December 5, 2008, December 12, 2008, *McKinney Courier-Gazette*.	The Honorable Keith Self, Collin County Judge, 210 South McDonald Street, Suite 626, McKinney, TX 75069.	April 13, 2009	480130
Collin (FEMA Docket No.: B–1033).	City of Lowry Crossing (08–06–1493P).	December 5, 2008, December 12, 2008, *McKinney Courier-Gazette*.	The Honorable Gary Piatt, Mayor, City of Lowry Crossings, 1405 South Bridge Farmer Rd, McKinney, TX 75069.	April 13, 2009	481631
Collin (FEMA Docket No.: B–1033).	City of McKinney (08–06–1493P).	December 5, 2008, December 12, 2008, *McKinney Courier-Gazette*.	The Honorable Bill Whitfield, Mayor, City of McKinney, 222 North Tennessee, McKinney, TX 75069.	April 13, 2009	480135
Collin (FEMA Docket No.: B–1033).	City of McKinney (08–06–1994P).	December 8, 2008, December 15, 2008, *McKinney Courier-Gazette*.	The Honorable Bill Whitfield, Mayor, City of McKinney, 222 North Tennessee, McKinney, TX 75069.	April 14, 2009	480135

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Denton (FEMA Docket No.: B–1030).	City of Denton (08–06–2890P).	December 10, 2008, December 17, 2008, *Denton Record-Chronicle*.	The Honorable Mark A. Burroughs, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	April 16, 2009	480194
Denton (FEMA Docket No.: B–1027).	Town of Northlake (07–06–2017P).	November 13, 2008, November 20, 2008, *Fort Worth Star Telegram and Denton Record Chronicle*.	The Honorable Robin Young, Mayor, Town of Northlake, 1301 FM 407, Northlake, TX 76247.	March 20, 2009	480782
Ellis (FEMA Docket No.: B–1039).	City of Waxahachie (08–06–1778P).	October 1, 2008, October 8, 2008, *Waxahachie Daily Light*.	The Honorable Ron Wilkinson, Mayor, City of Waxahachie, P.O. Box 757, Waxahachie, TX 75168–0757.	February 5, 2009	480211
Fort Bend (FEMA Docket No.: B–7727).	Unincorporated Areas of Fort Bend County (06–06–BI97P).	June 21, 2007, June 28, 2007, *Fort Bend Herald*.	The Honorable Robert E. Herbert, PhD, Fort Bend County Judge, 301 Jackson Street, Richmond, Texas 77469.	September 27, 2007	480228
Fort Bend (FEMA Docket No.: B–7727).	Fort Bend County, M.U.D. # 23 (06–06–BI97P).	June 21, 2007, June 28, 2007, *Fort Bend Herald*.	The Honorable Ellen Hughes, District President, Fort Bend County Municipal Utility, District No. 23, 1715 Misty Fawn Lane, Fresno, Texas 77545.	September 27, 2007	481590
Fort Bend (FEMA Docket No.: B–7727).	City of Missouri City (06–06–BI97P).	June 21, 2007, June 28, 2007, *Fort Bend Herald*.	The Honorable Allen Owen, Mayor, City of Missouri City, 1522 Texas Parkway, Missouri City, Texas 77459.	September 27, 2007	480304
Guadalupe (FEMA Docket No.: B–1036).	Unincorporated areas of Guadalupe County (07–06–2617P).	October 16, 2008, October 23, 2008, *Seguin Gazette Enterprise*.	The Honorable Mike Wiggins, Guadalupe County Judge, 307 West Court Street, Seguin, Texas 78155.	February 20, 2009	480266
Harris (FEMA Docket No.: B–1030).	Unincorporated areas of Harris County (07–06–1885P).	December 11, 2008, December 18, 2008, *Houston Chronicle*.	The Honorable Ed Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	November 28, 2008	480287
Harris (FEMA Docket No.: B–1030).	Unincorporated areas of Harris County (08–06–1677P).	December 4, 2008, December 11, 2008, *Houston Chronicle*.	The Honorable Ed Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	April 10, 2009	480287
Hays (FEMA Docket No.: B–1039).	City of Buda (07–06–1994P, re-issues 06–06–B986P).	May 9, 2007, May 16, 2007, *Hays County Free Press*.	The Honorable John Trube, Mayor, City of Buda, P.O. Box 1218, Buda, TX 78610.	August 15, 2007	481640
Hays (FEMA Docket No.: B–1039).	Unincorporated areas of Hays County (07–06–1994P, re-issues 06–06–B986P).	May 9, 2007, May 16, 2007, *Hays County Free Press*.	The Honorable Jim Powers, Hays County Judge, 111 East San Antonio Street, Suite 300, San Marcos, TX 78666.	August 15, 2007	480321
Hays (FEMA Docket No.: B–1036).	Unincorporated areas of Hays County (07–06–2617P).	October 16, 2008, October 23, 2008, *San Marcos Daily Record*.	The Honorable Liz Sumter, Hays County Judge, 111 East San Antonio Street, Suite 300, San Marcos, TX 78666.	February 20, 2009	480321
Hunt (FEMA Docket No.: B–1042).	City of Greenville (08–06–1111P).	July 30, 2008, August 6, 2008, *Herald Banner*.	The Honorable Tom Oliver, Mayor, City of Greenville, P.O. Box 1049, Greenville, TX 75401.	December 4, 2008	485473
Johnson (FEMA Docket No.: B–1023).	City of Burleson (08–06–0984P).	November 5, 2008, November 12, 2008, *Burleson Star*.	The Honorable Kenneth Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	March 12, 2009	485459
Johnson (FEMA Docket No.: B–1030).	City of Burleson (08–06–3114P).	December 10, 2008, December 17, 2008, *Burleson Star*.	The Honorable Kenneth Shetter, Mayor, City of Burleson, 141 West Renfro Street, Burleson, TX 76028.	April 16, 2009	485459
Johnson (FEMA Docket No.: B–1030).	Unincorporated areas of Johnson County (08–06–1603P).	December 10, 2008, December 17, 2008, *Cleburne Times-Review*.	The Honorable Roger Harmon, Judge, Johnson County, Johnson County Courthouse, 2 North Main Street, Cleburne, TX 76031.	December 29, 2008	480879
Johnson (FEMA Docket No.: B–1030).	Unincorporated areas of Johnson County (08–06–3114P).	December 10, 2008, December 17, 2008, *Cleburne Times-Review*.	The Honorable Roger Harmon, Johnson County Judge, Johnson County Courthouse, 2 North Main Street, Cleburne, TX 76031.	April 16, 2009	480879
Tarrant (FEMA Docket No.: B–1027).	City of Fort Worth (07–06–2017P).	November 13, 2008, November 20, 2008, *Fort Worth Star Telegram and Denton Record-Chronicle*.	The Honorable Mike J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	March 20, 2009	480596
Wisconsin:					
Dunn (FEMA Docket No.: B–1027).	Village of Boyceville (07–05–5620P).	November 19, 2008, November 26, 2008, *Tribune Press Reporter*.	The Honorable Gilbert Krueger, President, Village of Boyceville, 903 Main Street, Boyceville, WI 54725.	March 26, 2009	550119

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: May 21, 2009.

Deborah S. Ingram,

Acting Deputy Assistant Administrator for Mitigation, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E9–12843 Filed 6–2–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1052]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Assistant Administrator of FEMA reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This interim rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Calhoun	City of Anniston (09–04–1158P).	April 6, 2009, April 13, 2009, *The Anniston Star.*	The Honorable Gene D. Robinson, Mayor, City of Anniston, P.O. Box 2168, Anniston, AL 36202.	August 11, 2009	010020
Tuscaloosa	City of Tuscaloosa (08–04–6875P).	April 13, 2009, April 20, 2009, *The Tuscaloosa News.*	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, P.O. Box 2089, Tuscaloosa, AL 35403.	August 18, 2009	010203
Tuscaloosa	Unincorporated areas of Tuscaloosa County (08–04–6875P).	April 13, 2009, April 20, 2009, *The Tuscaloosa News.*	The Honorable W. Hardy McCollum, Tuscaloosa County Probate Judge, 714 Greensborough Avenue, Tuscaloosa, AL 35401.	August 18, 2009	010201
Arizona:					
Maricopa	Town of Cave Creek (09–09–0129P).	February 11, 2009, February 18, 2009, *Sonoran News.*	The Honorable Vincent Francia, Mayor, Town of Cave Creek, 37622 North Cave Creek Road, Cave Creek, AZ 85331.	June 18, 2009	040129

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maricopa	Town of Cave Creek (09–09–0431P).	April 8, 2009, April 15, 2009, *Sonoran News*.	The Honorable Vincent Francia, Mayor, Town of Cave Creek, 37622 North Cave Creek Road, Cave Creek, AZ 85331.	July 14, 2009	040129
Maricopa	Town of Cave Creek (09–09–0432P).	April 8, 2009, April 15, 2009, *Sonoran News*.	The Honorable Vincent Francia, Mayor, Town of Cave Creek, 37622 North Cave Creek Road, Cave Creek, AZ 85331.	August 13, 2009	040129
Arkansas: Benton	City of Rogers (08–06–1043P).	March 31, 2009, April 7, 2009, *The Morning News*.	The Honorable Steve Womack, Mayor, City of Rogers, 301 West Chestnut Street, Rogers, AR 72756.	August 5, 2009	050013
California:					
Orange	City of Huntington Beach (08–09–1428P).	April 9, 2009, April 16, 2009, *Huntington Beach Independent*.	The Honorable Keith Bohr, Mayor, City of Huntington Beach, 2000 Main Street, Huntington Beach, CA 92648.	March 30, 2009	065034
San Diego	City of Escondido (08–09–1101P).	April 3, 2009, April 10, 2009, *North County Times*.	The Honorable Ron Roberts, Chairman, San Diego County Board of Supervisors, County of San Diego Administration Center, 1600 Pacific Highway, Room 335, San Diego, CA 92101.	August 10, 2009	060290
San Diego	City of San Diego (09–09–0601P).	April 9, 2009, April 16, 2009, *San Diego Transcript*.	The Honorable Jerry Sanders, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101.	August 14, 2009	060295
San Diego	Unincorporated areas of San Diego County, (09–09–0601P).	April 9, 2009, April 16, 2009, *San Diego Transcript*.	The Honorable Dianne Jacob, Chairwoman, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, CA 92101.	August 14, 2009	060284
Shasta	City of Redding (08–09–0964P).	March 9, 2009, March 16, 2009, *Record Searchlight*.	The Honorable Rick Bosetti, Mayor, City of Redding, P.O. Box 496071, Redding, CA 96001.	March 30, 2009	060360
Colorado:					
Weld	Town of Severance (08–08–0702X).	February 20, 2009, February 27, 2009, *Greeley Tribune*.	The Honorable Pierre De Milt, Mayor, Town of Severance, 231 West Fourth Avenue, Severance, CO 80546.	June 29, 2009	080317
Weld	Unincorporated areas of Weld County (08–08–0702X).	February 20, 2009, February 27, 2009, *Greeley Tribune*.	The Honorable David E. Long, Chairman, Weld County Board of Commissioners, P.O. Box 758, Greeley, CO 80632.	June 29, 2009	080266
Florida:					
Lee	Unincorporated areas of Lee County (09–04–1718P).	April 1, 2009, April 8, 2009, *Fort Myers News Press*.	The Honorable Ray Judah, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902.	March 19, 2009	125124
Sumter	City of Wildwood (08–04–1977P).	April 9, 2009, April 16, 2009, *Sumter County Times*.	The Honorable Ed Wolf, Mayor, City of Wildwood, 100 North Main Street, Wildwood, FL 34785.	March 30, 2009	120299
Georgia: Walton	Unincorporated areas of Walton County (08–04–1976P).	April 9, 2008, April 16, 2008, *Walton Tribune*.	The Honorable Kevin Little, Chairman, Walton County Board of Commissioners, 1269 Good Hope Road, Monroe, GA 30655.	August 15, 2008	130185
Hawaii: Hawaii	Unincorporated areas of Hawaii County (08–09–0823P).	April 6, 2009, April 13, 2009, *Hawaii Tribune-Herald*.	The Honorable William Kenoi, Mayor, Hawaii County, 25 Aupuni Street, Hilo, HI 96720.	August 11, 2009	155166
Illinois: DuPage	Unincorporated areas of DuPage County (09–05–0307P).	April 1, 2009, April 8, 2009, *Daily Herald*.	The Honorable Robert J. Schillerstorm, Chairman, DuPage County Board, 421 North County Farm Road, Wheaton, IL 60187.	March 18, 2009	170197
Louisiana: Catahoula	Unincorporated areas of Catahoula Parish (08–06–1686P).	September 10, 2008, September 17, 2008, *Catahoula News Booster*.	The Honorable Jackie Paulk, President, Catahoula Parish, P.O. Box 258, Harrisonburg, LA 71340.	August 27, 2008	220047
Maryland: Allegany	Unincorporated areas of Allegany County (08–03–1580P).	January 9, 2009, January 16, 2009, *Cumberland Times News*.	The Honorable James J. Stakem, President, Allegany County Board of Commissioners, 701 Kelly Road, Fourth Floor, Cumberland, MD 21502.	January 30, 2009	240001
Mississippi:					
Rankin	City of Brandon (08–04–5371P).	April 8, 2009, April 15, 2009, *Rankin County News*.	The Honorable Carlo Martella, Mayor, City of Brandon, P.O. Box 1539, Brandon, MS 39043.	August 13, 2009	280143
Rankin	Unincorporated areas of Rankin County (08–04–5371P).	April 8, 2009, April 15, 2009, *Rankin County News*.	The Honorable Richard Wilson, Prosecutor, Rankin County, 211 East Government Street, Brandon, MS 39042.	August 13, 2009	280142
Nebraska: Sarpy	City of Papillion (08–07–1022P).	April 2, 2009, April 9, 2009, *Papillion Times*.	The Honorable James E. Blinn, Mayor, City of Papillion, 122 East 3rd St., Papillion, NE 68046.	August 7, 2009	315275
Nevada: Douglas	Unincorporated areas of Douglas County (09–09–0026P).	April 10, 2009, April 17, 2009, *The Record-Courier*.	Nancy McDermid, Chair, Douglas County Board of Commissioners, P.O. Box 218, Minden, NV 89423.	August 17, 2009	320008
Pennsylvania:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Chester	Township of West Whiteland (09–03–0246P).	April 8, 2009, April 15, 2009, *Daily Local News*.	The Honorable Diane Snyder, Chairman, West Whiteland Board of Supervisors, 222 North Pottstown Pike, Exton, PA 19341.	April 27, 2009	420295
Greene	Township of Franklin (09–03–0260P).	April 10, 2009, April 17, 2009, *Observer Reporter*.	The Honorable T. Reed Kiger, Chairman, Township of Franklin, 568 Rolling Meadows Road, Waynesburg, PA 15370.	August 17, 2009	422595
South Carolina:					
Charleston	City of Charleston (09–04–1604P).	April 9, 2009, April 16, 2009, *The Post and Courier*.	The Honorable Joseph P. Riley, Jr., Mayor, City of Charleston, P.O. Box 652, Charleston, SC 29402.	August 14, 2009	455412
Charleston	City of Charleston (09–04–1605P).	April 9, 2009, April 16, 2009, *The Post and Courier*.	The Honorable Joseph P. Riley, Jr., Mayor, City of Charleston, P.O. Box 652, Charleston, SC 29402.	August 14, 2009	455412
Tennessee:					
Wilson	City of Lebanon (08–04–4560P).	October 15, 2008, October 22, 2008, *The Wilson Post*.	The Honorable Donald W. Fox, Mayor, City of Lebanon, 200 North Castle Heights Avenue, Suite 100, Lebanon, TN 37087.	February 19, 2009	470208
Wilson	City of Mount Juliet (08–04–1366P).	April 11, 2008, April 18, 2008, *The Wilson Post*.	The Honorable Linda Elam, Mayor, City of Mount Juliet, 2425 North Mt. Juliet Road, Mt. Juliet, TN 37122.	April 9, 2008	470290
Wilson	Unincorporated areas of Wilson County (09–04–0257P).	April 10, 2009, April 17, 2009, *The Wilson Post*.	The Honorable Robert Dedman, County Mayor, Wilson County, 228 East Main Street, Lebanon, TN 37087.	August 17, 2009	470207
Texas:					
Bell	City of Temple (08–06–1223P).	March 9, 2009, March 16, 2009, *Temple Daily Telegram*.	The Honorable Bill Jones III, Mayor, City of Temple, Two North Main Street, Temple, TX 76501.	July 14, 2009	480034
Bexar	Unincorporated areas of Bexar County (08–06–1717P).	March 9, 2009, March 16, 2009, *San Antonio Express News*.	The Honorable Nelson W. Wolff, Bexar County Judge, 100 Dolorosa Street, Suite 120, San Antonio, TX 78205.	July 14, 2009	480035
Bexar	City of San Antonio (08–06–1717P).	March 9, 2009, March 16, 2009, *San Antonio Express News*.	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	July 14, 2009	480045
Bexar	City of San Antonio (08–06–3192P).	March 9, 2009, March 16, 2009, *San Antonio Express News*.	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	July 14, 2009	480045
Bexar	City of San Antonio (09–06–0610P).	April 3, 2009, April 10, 2009, *San Antonio Express News*.	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	March 24, 2009	480045
Collin	City of Wylie (07–06–2304P).	June 18, 2008, June 25, 2008, *Wylie News*.	The Honorable John Mondy, Mayor, City of Wylie, 2000 State Highway 78 North, Wylie, TX 75098.	October 23, 2008	480759
Dallas	City of Dallas (09–06–0918P).	April 8, 2009, April 15, 2009, *Dallas Morning News*.	The Honorable Tom Leppert, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	August 13, 2009	480171
Dallas	City of Farmers Branch (08–06–0532P).	April 10, 2009, April 17, 2009, *Dallas Morning News*.	The Honorable Tim O'Hare, Mayor, City of Farmers Branch, P.O. Box 819010, Farmers Branch, TX 75381.	August 17, 2009	480174
Dallas	City of Garland (09–06–0830P).	April 10, 2009, April 17, 2009, *Dallas Morning News*.	The Honorable Ronald E. Jones, Mayor, City of Garland, P. O. Box 469002, Garland, TX 75046–9002.	August 17, 2009	485471
Dallas	City of Sachse (07–06–2304P).	June 18, 2008, June 25, 2008, *Daily Commercial Recorder*.	The Honorable Mike Felix, Mayor, City of Sachse, 5560 State Highway 78, Sachse, TX 75048.	October 23, 2008	480186
Fort Bend	Unincorporated areas of Fort Bend County (08–06–2236P).	April 16, 2009, April 23, 2009, *Fort Bend Sun*.	The Honorable Robert E. Hebert, Ph.D., Fort Bend County Judge, 301 Jackson Street, Richmond, TX 77469.	August 21, 2009	480228
Fort Bend	City of Sugar Land (08–06–2236P).	April 16, 2009, April 23, 2009, *Fort Bend Sun*.	The Honorable James A. Thompson, Mayor, City of Sugar Land, P.O. Box 110, Sugar Land, TX 77487.	August 21, 2009	480234
Hays	Unincorporated areas of Hays County (08–06–2257P).	March 25, 2009, April 1, 2009, *San Marcos Daily Record*.	The Honorable Elizabeth Sumter, Judge, Hays County, 111 East San Antonio Street, Suite 300, San Marcos, TX 78666.	July 30, 2009	480321
Hays	City of San Marcos (08–06–2257P).	March 25, 2009, April 1, 2009, *San Marcos Daily Record*.	The Honorable Susan Narvaiz, Mayor, City of San Marcos, 630 East Hopkins Street, San Marcos, TX 78666.	July 30, 2009	485505
Kendall	City of Boerne (08–06–3123P).	March 13, 2009, March 20, 2009, *The Boerne Star*.	The Honorable Dan Heckler, Mayor, City of Boerne, P.O. Box 1677, Boerne, TX 78006.	July 20, 2009	480418
Tarrant	City of Fort Worth (09–06–0411P).	March 3, 2009, March 10, 2009, *Fort Worth Star Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	February 23, 2009	480596

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Tarrant	City of Southlake (09–06–0528P).	March 3, 2009, March 10, 2009, *Fort Worth Star Telegram*.	The Honorable Andy Wambsganss, Mayor, City of Southlake, 1400 Main Street, Suite 270, Southlake, TX 76092.	February 20, 2009	480612
Williamson	City of Round Rock (09–06–1098P).	April 2, 2009, April 9, 2009, *Round Rock Leader*.	The Honorable Alan McGraw, Mayor, City of Round Rock, 221 East Main Street, Round Rock, TX 78664.	August 7, 2009	481048
Williamson	Unincorporated areas of Williamson County (09–06–1098P).	April 2, 2009, April 9, 2009, *Round Rock Leader*.	The Honorable Dan A. Gattis, Williamson County Judge, 710 Main Street, Suite 101, Georgetown, TX 78626.	August 7, 2009	481079
Virginia:					
Albemarle	Unincorporated areas of Albemarle County (08–03–1578P).	April 8, 2009, April 15, 2009, *The Daily Progress*.	The Honorable David Slutzky, Chairman, Albemarle County Board of Supervisors, 401 McIntire Road, Charlottesville, VA 22902.	August 13, 2009	510006
Fauquier	Unincorporated areas of Fauquier County (09–03–0367P).	April 9, 2009, April 16, 2009, *Fauquier Times Democrat*.	The Honorable R. Holder Trumbo, Jr., Chairman, Fauquier County, 10 Hotel Street, Suite 208, Warrenton, VA 20186.	August 14, 2009	510055
Washington: Pierce	Town of Steilacoom (08–10–0544P).	April 13, 2009, April 20, 2009, *The News Tribune*.	The Honorable Ron Lucas, Mayor, Town of Steilacoom, 1030 Roe Street, Steilacoom, WA 98388.	March 31, 2009	530146

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: May 21, 2009.

Deborah S. Ingram,

Acting Deputy Assistant Administrator for Mitigation, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E9–12845 Filed 6–2–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 090218189–9910–02]

RIN 0648–AX29

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Missile Launch Activities at San Nicolas Island, CA

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

ACTION: Final rule.

SUMMARY: NMFS, upon application from the U.S. Navy (Navy), is issuing regulations to govern the unintentional taking of marine mammals, by harassment, incidental to missile launch operations from San Nicolas Island (SNI), California, for a 5–yr period. The Navy's activities are considered military readiness activities pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act of 2004 (NDAA). These regulations, which allow for the issuance of ''Letters of Authorization'' (LOAs) for the incidental take of marine mammals during the described activities and specified time frames, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

DATES: Effective June 2, 2009 through June 2, 2014.

ADDRESSES: A copy of the Navy's application, which contains a list of references used in this document, and NMFS' Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning the contact listed under **FOR FURTHER INFORMATION CONTACT**, or on the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Documents cited in this final rule may also be viewed, by appointment, during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 713–2289, ext. 156, or Monica DeAngelis, Southwest Regional Office, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The NDAA (Public Law 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA):

> (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On September 3, 2008, NMFS received an application from the Navy requesting authorization for the take of three species of marine mammals incidental to missile launches conducted by the Naval Air Warfare Center Weapons Division (NAWCWD) from the western part of SNI, which would impact pinnipeds hauled out on the island. Aircraft and helicopter flights between the Point Mugu airfield on the mainland, the airfield on SNI, and the target sites in the Point Mugu Sea Range will be a routine part of a planned launch operation. These activities are classified as military readiness activities. The Navy states that these activities may have both acoustic and non-acoustic effects on pinnipeds. The Navy requested authorization to take three pinniped species by Level B Harassment.

Measurement of Airborne Sound Levels

The following section is provided to facilitate understanding of airborne and impulsive noise characteristics. In its application, the Navy references both pressure and energy measurements for sound levels. For pressure, the sound pressure level (SPL) is described in terms of decibels (dB) re μPa, and for energy, the sound exposure level (SEL) is described in terms of dB re Pa^2• s. In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound (in this case, one second).

Airborne noise measurements are usually expressed relative to a reference pressure of 20 Pa, which is 26 dB above the underwater sound pressure reference of 1 μPa. However, the conversion from air to water intensities is more involved than this and is beyond the scope of this document. NMFS recommends interested readers review NOAA's tutorial on this issue: *http://www.pmel.noaa.gov/vents/acoustics/tutorial/tutorial.html*. Also, airborne sounds are often expressed as broadband A-weighted (dBA) or C-weighted (dBC) sound levels. A-weighting refers to frequency-dependent weighting factors applied to sound in accordance with the sensitivity of the human ear to different frequencies. With A-weighting, sound energy at frequencies below 1 kHz and above 6 kHz are de-emphasized and approximates the human ear's response to sounds below 55 dB. C-weighting corresponds to the relative response to the human ear to sound levels above 85 dB. C-weight scaling is useful for analyses of sounds having predominantly low-frequency sounds, such as sonic booms.

Description of the Specified Activity

The NAWCWD is the Navy's full-spectrum research, development, test, and evaluation center of excellence for weapons systems associated with air warfare, aircraft weapons integration, missiles and missile subsystems, and assigned airborne electronic warfare systems. NAWCWD is a multi-site organization that includes the Point Mugu Sea Range (Sea Range) and is responsible for environmental compliance for this Sea Range and SNI. NAWCWD plans to continue a launch program for missiles from several launch sites on SNI. The purpose of these launches is to support test and training activities associated with operations on the Sea Range. Figure 1 in the Navy's application provides a regional site map of the Range and SNI. A more detailed description of the island and proposed launch activities are provided in the Point Mugu Sea Range Final Environmental Impact Statement/Overseas Environmental Impact Statement (NAWCWD, 2002) and in reports on previous vehicle launch monitoring periods (e.g., Holst *et al.*, 2005a, 2008). The Sea Range is used by the U.S. and allied military services to test and evaluate sea, land, and air weapon systems; to provide realistic training opportunities; and to maintain operational readiness of these forces. Some of the SNI launches are used for practicing defensive drills against the types of weapons simulated by these vehicles. Some launches may be conducted for the related purpose of testing new types of missiles, to verify that they are suitable for operational use.

The vehicles are launched from one of several fixed locations on the western end of SNI and fly generally westward through the Sea Range. Launches are expected to involve supersonic and subsonic vehicles. Some vehicles are launched from the Alpha Launch Complex located 190 m (623.4 ft) above sea level on the west-central part of SNI (see Figure 2 in the Navy's application). The Building 807 Launch Complex, used for most launches of smaller vehicles, as well as some large ones, is at the western end of SNI at approximately 11 m (36 ft) above sea level.

The Navy may launch as many as 200 vehicles from SNI over a 5–yr operations program, with up to 40 launches per year, but this number can vary depending on operational requirements. Launch timing will be determined by operational, meteorological, and logistical factors. Up to 10 launches per year may occur at night. Nighttime launches will only take place when required by the test objectives, e.g., when testing the Airborne Laser system (ABL). For this system, missiles must be launched at night when the laser is visible. Some launch events involve a single vehicle, while others involve the launch of multiple vehicles either in quick succession or at intervals of a few hours.

The Coyote Supersonic Sea-skimming Target (SSST) is anticipated to be the primary launch vehicle. However, the Navy states that it may become necessary to substitute similar vehicles or different equipment in some cases. While other vehicles may be launched in the future, the largest contemplated in the Navy's application and this **Federal Register** notice is 23,000 kg (50,706 lb). These larger vehicles would be launched up to 3 times per year. A detailed description of the activities to be conducted by the Navy, including details on the types of vehicles to be launched, was included in the proposed rule (74 FR 11891, March 20, 2009) and may also be found in the Navy's application (see **ADDRESSES**). The description of the Coyote SSST has been left in this **Federal Register** document with some added information regarding the Vandal missile (which was formerly the primary launch vehicle) on SNI for comparison of the two missiles.

Coyote

The Coyote, designated GQM–163A, is an expendable SSST powered by a ducted-rocket ramjet. It has replaced the Vandal, which was used as the primary vehicle during launches from 2001–2005. The Coyote is similar in size and performance to the Vandal. The Vandal was 7.7 m (25.2 ft) in length, not including the booster rocket. It had a diameter of 71 cm (28 in), excluding fins, with a total span of 2.9 m (9.5 ft). The Vandal could reach a maximum speed of Mach 2.125 in sea-skimming mode.

The Coyote is capable of flying at low altitudes (4 m [13 ft] cruise altitude) and supersonic speeds (Mach 2.5) over a flight range of 83 km (51.6 mi). This vehicle is designed to provide a ground launched aerial target system to simulate a supersonic, sea-skimming Anti-Ship Cruise Missile threat. The SSST assembly consists of two primary subsystems: MK 70 solid propellant booster and the GQM–163A target vehicle. The solid-rocket booster is approximately 46 cm (18 in) in diameter and is of the type used to launch the Navy's ''Standard'' surface-to-air

missile. The GQM–163A target vehicle is 5.5 m (18 ft) long and 36 cm (14 in) in diameter, exclusive of its air intakes. It consists of a solid-fuel Ducted Rocket (DR) ramjet subsystem, Control and Fairing Subassemblies, and the Front End Subsystem (FES). Included in the FES is an explosive destruct system to terminate flight if required.

The Coyote utilizes the Vandal launcher, currently installed at the Alpha Launch Complex on SNI with a Launcher Interface Kit. A modified AQM–37C Aerial Target Test Set is utilized for target checkout, mission programming, verification of the vehicle's ability to perform the entire mission, and homing updates while the vehicle is in flight.

During a typical launch, booster separation occurs approximately 5.5 s after launch and approximately 2.6 km (1.6 mi) downrange, at which time the vehicle has a speed of approximately Mach 2.35 (Orbital Sciences Corp; *www.orbital.com*). Following booster separation, the GQM–163A's DR ramjet ignites, the vehicle reaches its apogee, and then dives to 5 m (16.4 ft) altitude while maintaining a speed of Mach 2.5. During launches from SNI, the low-altitude phase occurs over water west of the island. The target performs pre-programmed maneuvers during the cruise and terminal phases, as dictated by the loaded mission profile, associated waypoints, and mission requirements. During the terminal phase, the Coyote settles down to an altitude of 4 m (13 ft) and Mach 2.3 until DR burnout.

During 2003–2007, Coyotes were launched from SNI at azimuths of 270–300° and elevation angles of 14–22° (Holst *et al.*, 2005a, 2008). Coyotes produced flat-weighted SPLs (SPL-f) of 125–134 decibels reference 20 μPa (dB re 20 μPa) at distances of 0.8–1.7 km (0.5–1.1 mi) from the three-dimensional (3–D) closest point of approach (CPA) of the vehicle, and 82–93 dB at CPAs of 2.4–3.2 km (1.5–2 mi) (Holst *et al.*, 2005a, 2008). Flat-weighted SELs (SEL-f) ranged from 87 to 119 dB re 20 $\mu Pa^2 \bullet$ s. SELs M-weighted for pinnipeds in air (Mpa) ranged from 60 to 114 dB re 20 μPa^2s, and peak pressures ranged from 100 to 144 dB re 20 μPa. The reference sound pressure (20 μPa) used here and throughout the document, is standard for airborne sounds.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Channel Islands/southern California Bight ecosystem and its associated marine mammals can be found in several documents (Le Boeuf and Brownell, 1980; Bonnell *et al.*, 1981; Lawson *et al.*, 1980; Stewart, 1985; Stewart and Yochem, 2000; Sydeman and Allen, 1999) and is not repeated here.

Many of the beaches in the Channel Islands provide resting, molting or breeding places for several species of pinnipeds including: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern fur seals (*Callorhinus ursinus*), Guadalupe fur seals (*Arctocephalus townsendi*), and Steller sea lions (*Eumetopias jubatus*). On SNI, three of these species, northern elephant seals, harbor seals, and California sea lions, can be expected to occur on land in the area of the proposed activity either regularly or in large numbers during certain times of the year.

Northern fur seals, Guadalupe fur seals, and Steller sea lions are far less common on SNI. The northern fur seal is occasionally sighted on SNI in small numbers (Stewart and Yochem, 2000); a single female with a pup was sighted on the island in July 2007 (NAWCWD, 2008). It is also possible that individual Guadalupe fur seals may be sighted on the beaches. The Guadalupe fur seal is an occasional visitor to the Channel Islands, but breeds mainly on Guadalupe Island, Mexico, which is approximately 463 km (288 mi) south of the Sea Range. The last sighting was of a lone individual seen ashore in the summer of 2007 (NAWCWD, 2008). The Steller sea lion was once abundant in these waters, but numbers have declined since 1938. No adult Steller sea lions have been sighted on land in the Channel Islands since 1983 (Stewart *et al.*, 1993c in NMFS 2008). Recently, there have been sightings of two to three Steller sea lions in Southern California along the mainland, but there have still been no recent sightings out on any of the Channel Islands (M. DeAngelis, NMFS, Southwest Regional Office, 2009, pers. comm.). Thus, it is very unlikely that Steller sea lions will be seen on or near SNI beaches.

Additional information on the biology, distribution, and abundance of the marine mammal species likely to be affected by the launch activities on SNI can be found in the Navy's application (see **ADDRESSES**) and the NMFS Stock Assessment Reports, which can be found at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2008.pdf*. Please refer to those documents for information on those species.

Comments and Responses

On September 16, 2008, NMFS published a notice of receipt of application for an LOA in the **Federal Register** (73 FR 53408) and requested comments and information from the public for 30 days. NMFS received comments from the Marine Mammal Commission (Commission). NMFS' response to the Commission's comments are addressed in the proposed rule **Federal Register** notice (74 FR 11891, March 20, 2009). On March 20, 2009, NMFS published a notice of proposed rulemaking (74 FR 11891) on the Navy's request to take marine mammals incidental to missile launch activities on SNI and requested comments, information, and suggestions concerning the request. During the 30–day public comment period, NMFS received comments from the Commission and one private citizen. The comment from the private citizen opposed the issuance of an authorization without any specific substantiation for why such an authorization should not be issued. For the reasons set forth in this preamble, NMFS believes issuance of the authorization is appropriate. The following are the comments from the Commission and NMFS' responses.

Comment 1: The Commission recommends that NMFS adopt a general policy of providing a 60–day comment period for all proposed regulations issued under section 101(a)(5)(A), and in no case less than a 45–day comment period, absent a showing of good cause that such a comment period is impractical, unnecessary, or contrary to the public interest, as provided for under section 553(b)(3)(B) of the Administrative Procedure Act (APA).

Response: When practical, NMFS may provide 45 days for public comment on proposed rulemakings. However, in this particular case, a 30–day comment period was reasonable. The Missile Defense Agency (MDA), a customer of the Navy range at SNI, has proposed to launch a series of four small missile targets beginning as soon as possible after publication of this final rule. These launches are critical steps in a larger development and testing program for the ABL, a new weapon system being developed by MDA as part of its national security mission to improve military readiness and protect homeland security. A delay in implementing the regulations would result in a delay of testing and development of this critical program. (Further explanation is provided in the ''Classification'' section of this **Federal Register** document.) In all circumstances, NMFS attempts to balance the prevailing conditions with the complexity of the rule when setting a comment period. Additionally, section 553(b)(3)(B) of the APA does not specify a time requirement for comment periods on proposed rulemaking but rather that

notice must be given if good cause exists that a comment period itself is impractical, unnecessary, or contrary to the public interest.

NMFS has been issuing MMPA authorizations to the Navy to conduct these activities on SNI since 2001, which has allowed NMFS to develop relatively standard mitigation and monitoring requirements for these activities, so rarely more than one or two public comments are received. The public was afforded a 30–day comment period to submit information and suggestions on the preparation of proposed regulations beginning on September 16, 2008 with the publication of the notice of receipt of application (73 FR 53408). NMFS received only one comment letter at that time. Only two organizations or members of the public commented on the proposed rule. NMFS did not receive any other requests to extend the comment period. In this particular case, NMFS believes that the 30–day comment period afforded the public on the proposed rulemaking was reasonable.

Comment 2: The Commission recommends that NMFS make the Navy's interim report on 2009–2010 monitoring activities (to be submitted in 2010), which is called for under the proposed rule, available to the Commission and others for review and comment before authorizing any changes to the monitoring program.

Response: NMFS concurs. NMFS will provide a copy of the Navy's interim report submitted in 2010 to the Commission and others for review and comment before authorizing any changes to the monitoring program.

Comment 3: The Commission recommends that NMFS require the Navy to investigate any injury or death of a marine mammal if the animal's death could be associated with the Navy's activities to determine the cause, assess the full impact of the activity, determine how the activity should be modified to avoid future injuries or deaths, and ascertain if additional taking authority is needed.

Response: The Navy is not authorized to investigate or handle marine mammal carcasses. This must be done by a member of the Marine Mammal Stranding Network. However, the Navy must notify the NMFS Office of Protected Resources and NMFS Southwest Regional Office within 48 hours of the discovery of an injured or dead marine mammal. Additionally, the Stranding Network must be notified immediately. The regulations also contain a requirement that if an injurious or lethal take of a marine mammal has occurred, the launch procedure and monitoring methods must be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes will be made to an LOA prior to conducting the next launch of the same vehicle under the LOA. No serious injury or mortality is anticipated as a result of the Navy's activities.

Comment 4: The Commission recommends that NMFS require the Navy to halt an activity if a marine mammal species other than those covered by the authorization is observed within the operating area.

Response: This requirement is already part of the general conditions contained in LOAs issued by NMFS. Conditions contained in current and previous LOAs for this and other actions generally state the type of taking that is permitted and also identify the species that are authorized for taking. The condition then goes on to state that the taking by harassment, injury, or death of any other species of marine mammal is prohibited and may result in the modification, suspension or revocation of the LOA. Additionally, the taking of any marine mammal in a manner prohibited under the LOA must be reported to NMFS within 48 hours of the taking. Therefore, if the Navy sighted a marine mammal not covered by the LOA in the area of a launch where taking might occur and still went forward with the launch, then the Navy would be operating in violation of the LOA and the MMPA.

Potential Effects of Specified Activities on Marine Mammals

As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions, such as stampedes into the sea from terrestrial haul-out sites;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence (as are vehicle launches), and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding, or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment.

Potential impacts of the planned missile launch operations at SNI on marine mammals involve both acoustic and non-acoustic effects. Acoustic effects relate to sound produced by the engines of all launch vehicles, and, in some cases, their booster rockets. Potential non-acoustic effects could result from the physical presence of personnel during placement of video and acoustical monitoring equipment. However, careful deployment of monitoring equipment is not expected to result in any disturbance to pinnipeds hauled out nearby. Any visual disturbance caused by passage of a vehicle overhead is likely to be minor and brief as the launch vehicles are relatively small and move at great speed. Information regarding behavioral reactions of pinnipeds to launches, hearing impairment of pinnipeds from launches, and non-auditory physiological responses to launches is contained in the Navy's application and the proposed rulemaking (74 FR 11891, March 20, 2009). The potential effects described in the proposed rule are the same as those that would occur under the final rule.

NMFS does not anticipate a significant impact on any of the species or stocks of marine mammals from

missile launches on SNI. While the reactions of the different species are variable and can involve occasional stampedes or other abrupt movements by some individuals, biological impacts of these responses appear to be limited. The responses are not likely to result in significant injury or mortality or long-term negative consequences to individuals or pinniped populations on SNI. Based on measurements of received sound levels during previous launches at SNI (e.g., Holst *et al.*, 2005a,b; 2008), the Navy and NMFS expect that there may be some effects on hearing sensitivity (TTS) for a few of the pinnipeds present, but these effects are expected to be mild and reversible. Although it is possible that some launch sounds as measured close to the launchers may exceed the permanent threshold shift (PTS) criteria, it is unlikely that any pinnipeds would be close enough to the launchers to be exposed to sounds strong enough to cause PTS. Therefore, NMFS anticipates that pinnipeds hauled out during launches on SNI will only incur short-term, minimal Level B harassment.

Numbers of Marine Mammals Estimated to be Taken

The marine mammal species NMFS believes likely to be taken by Level B harassment incidental to vehicle launch operations from SNI are harbor seals, California sea lions, and northern elephant seals. All of these species are protected under the MMPA, and none are listed under the Endangered Species Act (ESA). Any takes are most likely to result from operational noise as launch vehicles pass near haul-out sites and/or associated visual cues. As noted earlier and in the proposed rule (74 FR 11891, March 20, 2009), sightings of northern fur seals, Steller sea lions, and Guadalupe fur seals have been extremely rare or low on SNI. Therefore, no takes are anticipated for these three species incidental to the proposed activities.

The Navy provisionally estimates that the following numbers of pinnipeds may be taken by Level B harassment annually: 474 elephant seals; 467 harbor seals; and 1,606 California sea lions. The animals affected may be the same individual animals or may be different individuals, depending on site fidelity. Based on the results of the marine mammal monitoring conducted by the Navy during the 2001–2007 launch program, the estimated number of potential Level B harassment takes would actually be less than estimated or previously authorized. The criteria used by the Navy to estimate take numbers for the 2009–2014 program were developed specifically for the launches identified in the specified activity and are based on monitoring data collected during the 2001–2007 launch program at the same location and involving the same rocket types. Section 7.7 of the Navy's application contains a full description of how they developed their take numbers (see **ADDRESSES**).

With the incorporation of mitigation measures described later in this document, the Navy and NMFS expect that only Level B incidental harassment may occur as a result of the proposed activities and that these events will result in no detectable impact on marine mammal species or stocks or on their habitats.

Potential Effects of Specified Activities on Marine Mammal Habitat

Impacts on marine mammal habitat are part of the consideration in making a finding of negligible impact on the species and stocks of marine mammals. Habitat includes, but is not necessarily limited to, rookeries, mating grounds, feeding areas, and areas of similar significance. The proposed rule (74 FR 11891, March 20, 2009) contained a full description of the potential effects of the missile launch activities on marine mammal habitat. Only short-term disturbance of marine mammals is expected as a result of the proposed activities. The Navy's launch activity is not expected to cause significant impacts on habitats used by pinnipeds on SNI or on the food sources that these pinnipeds utilize.

Potential Effects of Specified Activities on Subsistence Needs

NMFS has determined that the issuance of an LOA for Navy missile launch activities on SNI would not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence uses since there are no such uses for these pinniped species in California.

Mitigation

To avoid additional harassment to the pinnipeds on beach haul-out sites and to avoid any possible sensitizing and/or predisposing pinnipeds to greater responsiveness to the sights and sounds of a launch, the Navy will limit activities near the beaches in advance of launches. Existing safety rules for vehicle launches provide a built-in mitigation measure of this type: personnel are not normally allowed near any of the pinniped haul-out beaches that are located close to the flight track on the western end of SNI within several hours prior to launch. Also, because of the presence of colonies of sensitive seabirds (as well as pinniped haul-out sites) on western SNI, there are already special restrictions on personnel movements near beaches on which pinnipeds haul out. Furthermore, most of these beaches are closed to personnel year-round.

The following mitigation measures have been incorporated into the regulations: (1) The Navy must avoid launch activities during harbor seal pupping season (February through April), unless constrained by factors including, but not limited to, human safety, national security, or for launch trajectory necessary to meet mission objectives; (2) the Navy must limit launch activities during other pinniped pupping seasons, unless constrained by factors including, but not limited to, human safety, national security, or for launch trajectory necessary to meet mission objectives; (3) the Navy must not launch missiles from the Alpha Complex at low elevation (less than 305 m [1,000 ft]) on launch azimuths that pass close to pinniped haul-out site(s) when occupied; (4) the Navy must avoid multiple vehicle launches in quick succession over haul-out sites when occupied, especially when young pups are present, except when required by mission objectives; and (5) the Navy must limit launch activities during nighttime hours, except when required by mission objectives (e.g., up to 10 nighttime launches for ABL testing per year).

Additionally, for 2 hr prior to, during, and approximately 30 mins following each launch, personnel are not allowed near any of the pinniped haul-out beaches that are close to the flight track on the western end of SNI. Lastly, associated fixed-wing and rotary aircraft will maintain an altitude of at least 305 m (1,000 ft) when traveling near beaches on which pinnipeds are hauled out, except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting, adverse weather conditions), which may require approaching pinniped haul-outs and rookeries closer than 305 m (1,000 ft).

If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred or there is an indication that the distribution, size, or productivity of the potentially affected pinniped populations has been affected, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes must be made through modification to an LOA, prior to conducting the next launch of the same vehicle under that LOA.

Monitoring

As part of its application, the Navy provided a proposed monitoring plan, similar to that adopted for previous Incidental Harassment Authorizations and regulations (see 66 FR 41834, August 9, 2001; 67 FR 56271, September 3, 2002; 68 FR 52132, September 2, 2003), for assessing impacts to marine mammals from missile launch activities from SNI. This monitoring plan is described in detail in the Navy's application (see **ADDRESSES**). The Navy will conduct the following monitoring during the first year under an LOA and the regulations.

Land-based Monitoring

In conjunction with a biological contractor, the Navy will continue its land-based monitoring program to assess effects on the three common pinniped species on SNI: northern elephant seals, harbor seals, and California sea lions. This monitoring will occur at three different sites of varying distance from the launch site before, during, and after each launch. The monitoring will be via autonomous video cameras. Pinniped behavior on the beach will be documented prior to, during, and following the launch. Additionally, new video equipment capable of obtaining video during night launches will be acquired for the ABL program.

During the day of each missile launch, the observer will place three digital video cameras overlooking chosen haul-out sites. Each camera will be set to record a focal subgroup within the haul-out aggregation for a maximum of 4 hr or as permitted by the videotape capacity. Following a launch, video records will be made for up to 1 hr. Observers will return to the observing sites as soon as it is safe to record the numbers and types of pinnipeds that are on the haul-out(s).

Following each launch, all digital recordings will be transferred to DVDs for analysis. A DVD player/computer with high-resolution freeze-frame and jog shuttle will be used to facilitate distance estimation, event timing, and characterization of behavior. Additional details of the field methods and video and data analysis can be found in the Navy's application.

Acoustical Measurements

During each launch, the Navy will obtain calibrated recordings of the levels and characteristics of the received launch sounds. Acoustic data will be acquired using three Autonomous Terrestrial Acoustic Recorders (ATARs) at three different sites of varying distances from the missile's flight path. ATARs can record sounds for extended periods (dependent on sampling rate) without intervention by a technician, giving them the advantage over traditional digital audio tape recorders should there be prolonged launch delays. To the extent possible, acoustic recording locations will correspond with the sites where video monitoring is taking place. The collection of acoustic data will provide information on the magnitude, characteristics, and duration of sounds that pinnipeds may be exposed to during a launch. In addition, the acoustic data can be combined with the behavioral data collected via the land-based monitoring program to determine if there is a dose-response relationship between received sound levels and pinniped behavioral reactions. Once collected, sound files will be sent to the acoustical contractor for sound analysis. Additional details regarding the installation and calibration of the acoustic instruments and analysis methods are provided in the Navy's application.

Reporting

An interim technical report will be submitted to NMFS 60 days prior to the expiration of each annual LOA issued under these regulations, along with a request for a follow-on annual LOA. This interim technical report will provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks for launches during the period covered by the LOA. However, only preliminary information will be available to be included for any launches during the 60–day period immediately preceding submission of the interim report to NMFS.

If a freshly dead or seriously injured pinniped is found during post-launch monitoring, the incident must be reported within 48 hours to the NMFS Office of Protected Resources and the NMFS Southwest Regional Office.

The 2009–2010 launch monitoring activities will constitute the eighth year of formal, concurrent pinniped and acoustical monitoring during launches from SNI. Following submission in 2010 of the interim report on the first phase of monitoring under an LOA, the Navy and NMFS will discuss the scope for any additional launch monitoring work on SNI subsequent to the first LOA issued under these regulations. Some biological or acoustic parameters may be documented adequately prior to or during the first LOA (2009–2010), and it may not be necessary to continue all aspects of the monitoring work after that period. Prior to making any changes to the monitoring plan for years two through five of the regulations, NMFS would provide a copy of the Navy's interim report submitted in 2010 to the Commission and others for review and comment. Any modifications to the monitoring program will be documented through publication in the **Federal Register**.

In addition to annual LOA reports, NMFS is requiring the Navy to submit a draft comprehensive final technical report to NMFS 180 days prior to the expiration of the regulations. This technical report will provide full documentation of methods, results, and interpretation of all monitoring tasks for launches during the first four LOAs, plus preliminary information for launches during the first 6 months of the final LOA. A revised comprehensive final technical report, including all monitoring results during the entire period of the LOA will be due 90 days after the end of the period of effectiveness of the regulations.

ESA

No species listed under the ESA are expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required. It should be noted however that SNI is the location to which southern sea otters have been translocated in an attempt to establish a population separate from that in central California. This experimental population may be affected by the missile launch activities at SNI. Sea otters are under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS). Under Public Law 99–625, this experimental population of sea otters is treated as a proposed species for purposes of Section 7 when the action (as here) is defense related. Proposed species require an action agency to confer with NMFS or the USFWS under Section 7 of the ESA when the action is likely to jeopardize the continued existence of the species. The information available for the Navy's activities described in this document or for NMFS' action of promulgating 5–yr regulations and the subsequent issuance of LOAs to the Navy for those activities does not indicate that sea otters are likely to be jeopardized. Therefore, a consultation is not required.

National Environmental Policy Act

NMFS prepared a Draft EA analyzing the potential issuance of regulations and annual LOAs to the Navy for the period 2009–2014 and made it available for public comment concurrently with the proposed rule. NMFS has finalized the EA and issued a FONSI for this action.

Therefore, preparation of an Environmental Impact Statement is not necessary for this action. NMFS' EA and FONSI are available upon request (see **ADDRESSES**).

Coastal Zone Management Act Consistency

On February 14, 2001, by a unanimous vote, the California Coastal Commission (CCC) concluded that, with the monitoring and mitigation commitments the Navy has incorporated into their various testing and training activities on the Point Mugu Sea Range, including activities on SNI, and including the commitment to enable continuing CCC staff review of finalized monitoring plans and ongoing monitoring results, the activities are consistent with the marine resources, environmentally sensitive habitat, and water quality policies (Sections 30230, 30240, and 30231) of the California Coastal Act. The activities described in these regulations are analogous to those reviewed by the CCC in 2001.

National Marine Sanctuaries Act

According to the Navy, except for aircraft and vessel traffic transiting the area, none of the Navy's proposed activities would take place within the Channel Islands National Marine Sanctuary. On December 8, 2008, NMFS consulted with the National Ocean Service's Office of National Marine Sanctuaries (ONMS) regarding NMFS' action of promulgating regulations and issuing LOAs for the Navy activities described in the Navy's application and this document to determine whether or not NMFS' action is likely to destroy, cause the loss of, or injure any sanctuary resources. On December 12, 2008, the ONMS determined that no further consultation with NMFS was required on its proposed action as this action is not likely to destroy, cause the loss of, or injure any national marine sanctuary resources.

Determinations

Based on the information provided in the Navy's application, NMFS' EA, this document, the public comments submitted on the application and proposed rule, and the Navy's comprehensive report of the activities through 2008, NMFS has determined that missile launch activities and aircraft and helicopter operations from SNI will result in no more than Level B harassment of Pacific harbor seals, California sea lions, and northern elephant seals. The effects of these military readiness activities from SNI will be limited to short term and localized changes in behavior, including temporarily vacating haul-outs, and possible TTS in the hearing of any pinnipeds that are in close proximity to a launch pad at the time of a launch. NMFS has also determined that any takes will have no more than a negligible impact on the affected species and stocks. No take by injury and/or death is anticipated, and the potential for permanent hearing impairment is unlikely. Harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document. NMFS' regulations for these exercises prescribe the means of effecting the least practicable adverse impact on marine mammals and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking. Additionally, the vehicle launch activities and aircraft and helicopter operations will not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence use, as there are no subsistence uses of these three pinniped species in California waters.

Classification

The Office of Management and Budget has determined that this rule is not significant for purposes of Executive Order 12866.

Good cause exists to waive the 30–day delay in effectiveness for this rule pursuant to 5 U.S.C. 553(d). The mitigation measures contained in this final rule are substantially similar to the measures contained in the 5–yr rule that expired on October 2, 2008. The MDA, a customer of the Navy range at SNI, has proposed to launch a series of four small missile targets beginning as soon as possible after publication of this final rule. These launches are critical steps in a larger development and testing program for the ABL, a new weapon system being developed by MDA as part of its national security mission to improve military readiness and protect homeland security. A delay in implementing the regulations would result in a delay of testing and development of this critical program. Delay in implementing the regulations would result in unnecessary additional cost to the government related to maintaining the launch facilities, missiles, and personnel in a ready condition. Due to delays in getting critical application materials from the Navy, NMFS could not process the MMPA authorization request any sooner. By waiving the 30–day delay in effectiveness for the final rule, the Navy would be able to minimize conflicts with other testing programs scheduled for SNI, allowing MDA to proceed with an already tight schedule for testing and development. The NAWCWD is the only entity regulated by this rule. The NAWCWD expressly requested that NMFS issue the rule and regulations and is both willing and able to comply with the requirements of NMFS' final regulations and LOA, as it was during the course of the previous rules and regulations issued to the NAWCWD by NMFS to conduct these activities, within the 30–day window.

At the proposed rule stage, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would apply only to the NAWCWD, Navy, and would have no effect, directly or indirectly, on small businesses. Because of this certification, a regulatory flexibility analysis is not required, and none has been prepared.

Changes from the Proposed Rule

In addition to minor edits to the rule for clarification, NMFS has made the following changes to the rule:

1. The title of the subpart now reads: ''Subpart N--Taking Of Marine Mammals Incidental To Missile Launch Activities from San Nicolas Island, CA.'' The word ''target'' was removed from the title and other places in the preamble and regulations in order to eliminate confusion, since a target is a type of missile.

2. Modified § 216.150(c) to remove extraneous detail (i.e., the names of the building complexes).

3. Modified § 216.155(a) to include e-mail as a notification method for upcoming activities and that notification should occur at least 1 week prior to activities possibly involving the taking of marine mammals instead of 2 weeks prior. The procedures used by the Navy for finalizing launch schedules usually only allow for notice 1 week prior to the activity instead of 2 weeks prior.

4. Combined § 216.155(d)(1)(ii) and (iii) from the proposed rule since it seemed redundant to include both as separate conditions. Additionally, the time required for video recordings prior to the launch was changed from 2 hrs to 1 hr since it is not practical to have monitoring occur for at least 2 hrs prior to a launch. This is due to the fact that if several delays occur, the tape could run out before the launch happens, and then there would be no recordings taken during and after the launch, or someone would need to get to the recording site

and reset the videotape, which could then lead to additional delays.

5. Modified § 216.155(d)(2)(ii) to clarify when acoustic recordings will be supplemented by the use of radar and telemetry systems.

6. Added § 216.155(e)(2)(iv).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: May 28, 2009.

Samuel D. Rauch III,

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

■ For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Subpart N, consisting of §§ 216.150 through 216.159, is added to part 216 to read as follows:

Subpart N—Taking Of Marine Mammals Incidental To Missile Launch Activities from San Nicolas Island, CA

Sec.

216.150 Specified activity and specified geographical region.
216.151 Effective dates.
216.152 Permissible methods of taking.
216.153 Prohibitions.
216.154 Mitigation.
216.155 Requirements for monitoring and reporting.
216.156 Applications for Letters of Authorization.
216.157 Letters of Authorization.
216.158 Renewal of Letters of Authorization.
216.159 Modifications of Letters of Authorization.

Subpart N—Taking Of Marine Mammals Incidental To Missile Launch Activities from San Nicolas Island, CA

§ 216.150 Specified activity and specified geographical region.

(a) This subpart applies only to the incidental taking of marine mammals specified in paragraph (b) of this section by the Naval Air Warfare Center Weapons Division, U.S. Navy, and those persons it authorizes to engage in missile launch activities and associated aircraft and helicopter operations at the Naval Air Warfare Center Weapons Division facilities on San Nicolas Island, California.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: northern elephant seals (Mirounga angustirostris), harbor seals (Phoca vitulina), and California sea lions (Zalophus californianus).

(c) This Authorization is valid only for activities associated with the launching of a total of 40 Coyote (or similar sized and smaller) missiles per year from San Nicolas Island, California.

§ 216.151 Effective dates.

This subpart is effective June 2, 2009 through June 2, 2014.

§ 216.152 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.157, the U.S. Navy, its contractors, and clients, may incidentally, but not intentionally, take marine mammals by harassment, within the area described in § 216.150, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The taking of marine mammals is authorized for the species listed in § 216.150(b) and is limited to Level B Harassment.

§ 216.153 Prohibitions.

Notwithstanding takings contemplated in § 216.150 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.157, no person in connection with the activities described in § 216.150 may:

(a) Take any marine mammal not specified in § 216.150(b);

(b) Take any marine mammal specified in § 216.150(b) other than by incidental, unintentional harassment, as discussed in § 216.152;

(c) Take a marine mammal specified in § 216.150(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§ 216.106 and 216.157.

§ 216.154 Mitigation.

(a) The activity identified in § 216.150 must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.150(c), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.157 must be implemented. These mitigation measures include (but are not limited to):

(1) The holder of the Letter of Authorization must prohibit personnel from entering pinniped haul-out sites below the missile's predicted flight path for 2 hours prior to planned missile launches.

(2) The holder of the Letter of Authorization must avoid launch activities during harbor seal pupping season (February through April), unless constrained by factors including, but not limited to, human safety, national security, or for launch trajectory necessary to meet mission objectives.

(3) The holder of the Letter of Authorization must limit launch activities during other pinniped pupping seasons, unless constrained by factors including, but not limited to, human safety, national security, or for launch trajectory necessary to meet mission objectives.

(4) The holder of the Letter of Authorization must not launch missiles from the Alpha Complex at low elevation (less than 1,000 feet (305 m)) on launch azimuths that pass close to pinniped haul-out sites when occupied.

(5) The holder of the Letter of Authorization must avoid launching multiple missiles in quick succession over haul-out sites, especially when young pups are present, except when required by mission objectives.

(6) The holder of the Letter of Authorization must limit launch activities during nighttime hours, except when required by mission objectives.

(7) Aircraft and helicopter flight paths must maintain a minimum altitude of 1,000 feet (305 m) from pinniped haul-outs and rookeries, except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting, adverse weather conditions), which may require approaching pinniped haul-outs and rookeries closer than 1,000 feet (305 m).

(8) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred or there is an indication that the distribution, size, or productivity of the potentially affected pinniped populations has been affected, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes must be made through modification to a Letter of Authorization, prior to conducting the next launch of the same vehicle under that Letter of Authorization.

(9) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

§ 216.155 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §§ 216.106 and 216.157 for activities described in § 216.150 are required to cooperate with NMFS, and any other Federal, state or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southwest Region, NMFS, by letter, e-mail, or telephone, at least 1 week prior to activities possibly involving the taking of marine mammals. If the authorized activity identified in § 216.150 is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in § 216.150(b), then the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301–713–2289), and the Administrator, Southwest Region, NMFS, or designee, by telephone (562–980–3232), within 48 hours of the discovery of the injured or dead animal.

(b) The National Marine Fisheries Service must be informed immediately of any changes or deletions to any portions of the proposed monitoring plan submitted, in accordance with the Letter of Authorization.

(c) The holder of the Letter of Authorization must designate biologically trained, on-site individual(s), approved in advance by the National Marine Fisheries Service, to record the effects of the launch activities and the resulting noise on pinnipeds.

(d) The holder of the Letter of Authorization must implement the following monitoring measures:

(1) *Visual Land-Based Monitoring.* (i) Prior to each missile launch, an observer(s) will place 3 autonomous digital video cameras overlooking chosen haul-out sites located varying distances from the missile launch site. Each video camera will be set to record a focal subgroup within the larger haul-out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

(ii) Systematic visual observations, by those individuals, described in paragraph (c) of this section, on pinniped presence and activity will be conducted and recorded in a field logbook or recorded on digital video for subsequent analysis for no less than 1 hour prior to the estimated launch time and for up to 1 hour immediately following each missile launch.

(iii) Documentation, both via autonomous video camera and human observer, will consist of:

(A) Numbers and sexes of each age class in focal subgroups;

(B) Description and timing of launch activities or other disruptive event(s);

(C) Movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement;

(D) Description of reactions;

(E) Minimum distances between interacting and reacting pinnipeds;

(F) Study location;

(G) Local time;

(H) Substratum type;

(I) Substratum slope;

(J) Weather condition;

(K) Horizontal visibility; and

(L) Tide state.

(2) *Acoustic Monitoring.* (i) During all missile launches, calibrated recordings of the levels and characteristics of the received launch sounds will be obtained from 3 different locations of varying distances from the missile's flight path. To the extent practicable, these acoustic recording locations will correspond with the haul-out sites where video monitoring is done.

(ii) Acoustic recordings will be supplemented by the use of radar and telemetry systems to obtain the trajectory of missiles in three dimensions, whenever data coverage allows.

(iii) Acoustic equipment used to record launch sounds will be suitable for collecting a wide range of parameters, including the magnitude, characteristics, and duration of each missile.

(e) The holder of the Letter of Authorization must implement the following reporting requirements:

(1) For each missile launch, the lead contractor or lead observer for the holder of the Letter of Authorization must provide a status report to the National Marine Fisheries Service, Southwest Regional Office, providing reporting items found under the Letter of Authorization, unless other arrangements for monitoring are agreed in writing.

(2) An initial report must be submitted to the Office of Protected Resources, and the Southwest Regional Office at least 60 days prior to the expiration of each annual Letter of Authorization. This report must contain the following information:

(i) Timing and nature of launch operations;

(ii) Summary of pinniped behavioral observations;

(iii) Estimate of the amount and nature of all takes by harassment or by other means; and

(iv) Evidence of compliance with mitigation measures.

(3) A draft comprehensive technical report will be submitted to the Office of Protected Resources and Southwest Regional Office, National Marine Fisheries Service, 180 days prior to the expiration of the regulations in this subpart, providing full documentation of the methods, results, and interpretation of all monitoring tasks for launches to date plus preliminary information for missile launches during the first 6 months of the final Letter of Authorization.

(4) A revised final comprehensive technical report, including all monitoring results during the entire period of the Letter of Authorization will be due 90 days after the end of the period of effectiveness of the regulations in this subpart.

(5) Both the 60–day and final reports will be subject to review and comment by the National Marine Fisheries Service. Any recommendations made by the National Marine Fisheries Service must be addressed in the final comprehensive report prior to acceptance by the National Marine Fisheries Service.

(f) Activities related to the monitoring described in paragraphs (c) and (d) of this section, or in the Letter of Authorization issued under §§ 216.106 and 216.157, including the retention of marine mammals, may be conducted without the need for a separate scientific research permit.

(g) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on San Nicolas Island for any activity involved in marine mammal monitoring either prior to, during, or after a missile launch in order to monitor the impact on marine mammals.

§ 216.156 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations contained in this subpart, the U.S. citizen (as defined by § 216.103) conducting the activity identified in § 216.150 (Naval Air Warfare Center Weapons Division, U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with § 216.157 or a renewal under § 216.158.

(b) The application must be submitted to NMFS at least 30 days before the activity is scheduled to begin.

(c) Applications for a Letter of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization,

(2) A description of the activity, the dates of the activity, and the specific location of the activity, and

(3) Plans to monitor the behavior and effects of the activity on marine mammals.

(d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of pinnipeds.

§ 216.157 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 216.158.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 216.158 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §§ 216.106 and 216.157 for the activity identified in § 216.150 will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.156 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under § 216.155(e), and the Letter of Authorization issued under § 216.157, which has been reviewed and accepted by NMFS; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§ 216.154 and 216.155 and the Letter of Authorization issued under §§ 216.106 and 216.157, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under § 216.106 and this section indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

§ 216.159 Modifications of Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 216.157 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.158, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.150(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.157 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

[FR Doc. E9–12948 Filed 6–2–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.070817467–8554–02]

RIN 0648–XP59

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Elephant Trunk Scallop Access Area to General Category Scallop Vessels

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the Elephant Trunk Scallop Access Area (ETAA) is closed effective 0001, June 1, 2009, to general category scallop vessels for the remainder of the 2009 fishing year. This action is based on the determination that allowing the ETAA to remain open when the Quarter II LAGC IFQ fishery opens on June 1, 2009, will result in an overrun of trip and catch quotas for that access area. This action is being taken to prevent the allocation of general category trips in the ETAA from being exceeded during the 2009 fishing year, in accordance with the regulations implementing Framework 19 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The closure of the ETAA to all general category scallop vessels is effective 0001, June 1, 2009, through February 28, 2010.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, (978) 281–9221, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing fishing activity in the Sea Scallop Access Areas are found at §§ 648.59 and 648.60. Regulations specifically governing general category scallop vessel operations in the ETAA are specified at § 648.59(e)(4)(ii). These regulations authorize vessels issued a valid general category scallop permit to fish in the ETAA under specific conditions, including a total of 1,964 trips that may be taken by general category vessels during the 2009 fishing year. The regulations at § 648.59(e)(4)(ii) require the ETAA to be closed to general category scallop vessels once the

Northeast Regional Administrator has determined that the allowed number of trips are projected to be taken.

Based on VMS declaration and analysis of fishing effort through May 15, 2009, 1,826 trips were completed by general category scallop vessels fishing in the ETAA, leaving 138 allotted trips when the Quarter II LAGC IFQ fishery opens on June 1, 2009. It is projected that the remaining 138 allocated trips would be taken by June 2, 2009, based on an average number of trips per day to date. This would result in only a 24-hour opening of the ETAA. A 24-hour opening could create a derby fishery situation, which would likely result in an overrun of the trip and catch quota, and could also create unsafe conditions for LACG IFQ vessels. Therefore, as of 0001, June 1, 2009, the ETAA is closed and will remain closed for the remainder of the 2009 fishing year, in accordance with the regulations at § 648.59(e)(4)(ii) to all general category scallop vessels.

Classification

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

This action closes the ETAA to all general category scallop vessels, as of 0001, June 1,2009, for the remainder of the 2009 fishing year. The regulations at § 648.59(e)(4)(ii) allow such action to ensure that general category scallop vessels do not take more than their allocated number of trips in the ETAA. The ETAA opened for the 2009 fishing year at 0001 hours on March 1, 2009. Data indicating the general category scallop fleet has taken all of the ETAA trips have only recently become available. To allow general category scallop vessels to continue to take trips in the ETAA during the period necessary to publish and receive comments on a proposed rule would result in vessels taking much more than the allowed number of trips in the ETAA. Excessive trips and harvest from the ETAA would result in excessive fishing effort in the ETAA, where effort controls are critical, thereby undermining conservation objectives of the FMP. Should excessive effort occur in the ETAA, future management measures would need to be more restrictive. Based on the above, under 5 U.S.C. 553(d)(3), proposed rulemaking is waived because it would be impracticable and contrary to the public interest to allow a period for public comment. Furthermore, for the same reasons, there is good cause under 5 U.S.C 553(d)(3) to waive the 30-day delayed effectiveness period for this action.

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

Dated: May 29, 2009

Kristen C. Koch,

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

[FR Doc. E9–12930 Filed 5–29–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 105
Wednesday, June 3, 2009

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–TM–09–0003; TM–08–06PR]

RIN 0581–AC91

National Organic Program; Proposed Amendments to the National List of Allowed and Prohibited Substances (Crops and Processing)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the U.S. Department of Agriculture's (USDA's) National List of Allowed and Prohibited Substances (National List) to reflect recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on November 30, 2007, and May 22, 2008. The recommendations addressed in this proposed rule pertain to exemptions (uses) for six substances in organic crop production and organic processing. Consistent with the recommendations from the NOSB, this proposed rule would add six substances, along with any restrictive annotations, to the National List. This proposed rule would also remove one substance from the National List, as the exemption for use in organic crop production has expired.

DATES: Comments must be received by August 3, 2009.

ADDRESSES: Interested persons may comment on this proposed rule using the following procedures:

- *Internet: http://www.regulations.gov.*
- *Mail:* Comments may be submitted by mail to: Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA–AMS–TMP–NOP, Room 4004–So., Ag Stop 0268, 1400 Independence Ave., SW., Washington, DC 20250.

Written comments responding to this proposed rule should be identified with the document number AMS–TM–09–0003; TM–08–06. You should identify the topic and section number of this proposed rule to which your comment refers. You should clearly indicate whether or not you support the exemption for any or all of the substances in this proposed rule. You should clearly indicate the reason(s) for your position. You should also indicate recommended language changes as appropriate. Please include relevant information and data to support your position, (*e.g.* scientific, environmental, manufacturing, industry impact information, etc.). Only relevant material supporting your position should be submitted.

It is our intention to have all comments concerning this proposed rule, including names and addresses when provided, regardless of submission procedure used, available for viewing on the Regulations.gov (*http://www.regulations.gov*) Internet site. Comments submitted in response to this proposed rule will also be available for viewing in person at USDA–AMS, Transportation and Marketing Programs, National Organic Program, Room 4004–South Building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Richard H. Mathews, Chief, Standards Development and Review Branch, Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Secretary established, within the National Organic Program (NOP) [7 CFR part 205], the National List regulations §§ 205.600 through 205.607. This National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies synthetic, nonsynthetic nonagricultural and nonorganic agricultural substances that may be used in organic handling. The Organic Foods Production Act of 1990, as amended, (7 U.S.C. 6501 *et seq.*), (OFPA), and NOP regulations, in § 205.105, specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural and any nonsynthetic nonagricultural substance used in organic handling be on the National List.

Under the authority of the OFPA, the National List can be amended by the Secretary based on proposed amendments developed by the NOSB. Since established, the National List has been amended eleven times, October 31, 2003 (68 FR 61987), November 3, 2003 (68 FR 62215), October 21, 2005 (70 FR 61217), June 7, 2006 (71 FR 32803), September 11, 2006 (71 FR 53299), June 27, 2007 (72 FR 35137), October 16, 2007 (72 FR 58469), December 10, 2007 (72 FR 69569), December 12, 2007 (72 FR 70479), September 18, 2008 (73 FR 54057), and October 9, 2008 (73 FR 59479).

This proposed rule would amend the National List to reflect six recommendations submitted to the Secretary by the NOSB on November 30, 2007, and May 22, 2008. Based upon their evaluation of petitions submitted by industry participants, the NOSB recommended that the Secretary add two substances (aqueous potassium silicate and sodium carbonate peroxyhydrate) for organic crop production to § 205.601, one substance (gellan gum) for organic processing to § 205.605, and three substances (fortified cooking wine—marsala, fortified cooking wine—sherry, and tragacanth gum) for organic processing to § 205.606 of the National List. The use of each substance in organic production was evaluated by the NOSB using the evaluation criteria specified in OFPA (7 U.S.C. 6517–6518).

This proposed rule would also remove one substance (Glycerine Oleate (Glycerol monooleate)) from § 205.601 at paragraph (m)(2)(i). Glycerine Oleate (Glycerol monooleate) (CAS #s 37220–82–9) was added to the National List on September 11, 2006 (71 FR 53299), as an inert ingredient with the annotation, for use only until December 31, 2006.

II. Overview of Proposed Amendments

The following provides an overview of the proposed amendments to designated sections of the National List regulations:

Section 205.601 Synthetic Substances Allowed for Use in Organic Crop Production

This proposed rule would amend § 205.601 of the National List regulations by: (1) Redesignating paragraphs (e)(2) through (e)(9) and (i)(1) through (i)(11) as paragraphs (e)(3) through (e)(10) and (i)(2) through (i)(12) respectively; and (2) adding new paragraphs (a)(8), (e)(2), and (i)(1) for the purpose of adding the following substances:

Aqueous potassium silicate (CAS #—1312–76–1). Aqueous potassium silicate was petitioned for two separate uses in organic crop production: As an insecticide and as plant disease control. Potassium silicate is manufactured by fusing the naturally occurring compounds, silica sand and potassium carbonate, into glass at a high temperature. The glass can be cooled and ground into a colorless or yellowish, fine powder and dissolved in water at a high temperature to produce an aqueous solution.

The Environmental Protection Agency (EPA) evaluated potassium silicate according to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and approved the unconditional registration of pesticide products containing potassium silicate as the sole active ingredient. The sites approved for the use of potassium silicate include agricultural crops, nuts, fruits, vines, turf and ornamentals. Potassium silicate functions as a desiccant and is used as a fungicide, insecticide or miticide. The target pests are mites, whiteflies and other insects, powdery mildew, botrytis, and root and turf diseases. Per the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), the EPA determined that potassium silicate is exempt from tolerance in or on food commodities when the application rate does not exceed 1 percent by weight in aqueous solution and when used in the context of good agricultural practices (40 CFR 180.1268). See also 71 FR 34267, June 14, 2006.

In its assessment of potassium silicate, the EPA concluded that toxicological risks to humans and non-target organisms, and the potential environmental/ecological effects from exposures to potassium silicate are negligible. The constituent materials, potassium and silica, are present in the terrestrial and aquatic environment at levels which exceed projected applications of potassium silicate. The breakdown products of potassium silicate, potassium and silicon dioxide, are not hazardous or persistent byproducts, and are ubiquitous in the environment. Dermal, eye and respiratory irritation that may occur through occupational exposures can be mitigated by the use of protective personal equipment and observance of re-entry interval restrictions. References: Potassium Silicate for use in crop production, Technical Advisory Panel Review Report, compiled by University of California Sustainable Agriculture Research and Education Program, September 4, 2003, *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5057629;* EPA Biopesticides Registration Action Document, Potassium Silicate, September 7, 2006, *http://www.epa.gov/oppbppd1/biopesticides/ingredients/tech_docs/brad_072606.pdf;* Potassium Silicate; Exemption for the Requirement of a Tolerance, 71 FR 34267, June 14, 2006; NOSB final recommendations, November 30, 2007, *http://tinyurl.com/bacvg8;* NOSB meeting transcripts, November 2007, *http://tinyurl.com/bqqzv8.*

At its November 27–30, 2007, meeting in Arlington, VA, the NOSB recommended adding aqueous potassium silicate to the National List for use in organic crop production as an insecticide and plant disease control. In this open meeting, the NOSB evaluated aqueous potassium silicate against the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA, received public comment, and concluded that the substance is consistent with the OFPA evaluation criteria. The NOSB specified the use of potassium silicate in the aqueous form, in order to exclude silica from sources other than naturally occurring sand, such as slag. To clarify the NOSB intent, Agricultural Marketing Service (AMS) proposes adding an annotation providing that the silica, used in the manufacture of potassium silicate, must be sourced from naturally occurring sand.

The NOP engaged in consultations with the EPA and Food and Drug Administration (FDA). The EPA informed the NOP that the recommended use of aqueous potassium silicate is consistent with EPA regulations. Concerning the use of aqueous potassium silicate, the FDA deferred to EPA as the appropriate regulatory body. Therefore, after consultation with the EPA and FDA regarding NOSB's recommendation to permit the use of aqueous potassium silicate in organic crop production, the Secretary is proposing to accept the NOSB's recommendation and amend § 205.601 of the National List by adding aqueous potassium silicate at new paragraphs (e)(2) and (i)(1) as an insecticide and as plant disease control, respectively, as follows:

Aqueous Potassium Silicate (CAS #—1312–76–1)—The silica, used in the manufacture of potassium silicate, must be sourced from naturally occurring sand.

Sodium carbonate peroxyhydrate (CAS #—15630–89–4). Sodium carbonate peroxyhydrate was petitioned for use in organic crop production as an algaecide. This substance is a white, granular, crystalline powder which is extremely soluble in water and decomposes when heated. It is manufactured via a dry, wet or spray process from sodium carbonate and hydrogen peroxide, both of which are naturally occurring and chemically produced. Upon contact with water sodium carbonate peroxyhydrate dissociates into sodium carbonate and hydrogen peroxide. The hydrogen peroxide oxidizes critical cellular components of the target organisms and further breaks down into water and oxygen. Hydrogen peroxide is currently on the National List (§ 205.601) for use in organic crop production as an algaecide, disinfectant and sanitizer, and as a plant disease control substance.

The EPA has classified sodium carbonate peroxyhydrate as a non-complex chemical that targets algae, moss, liverworts, slime molds and their spores. The EPA has indicated that sodium carbonate peroxyhydrate is effectively hydrogen peroxide when applied to water, but has not established a formal tolerance or exemption from tolerance for sodium carbonate peroxyhydrate. The EPA determines the applicability for use in food crop production on a product-by-product basis where sodium carbonate peroxyhydrate is the active ingredient. At the time of publication of this proposed rule, the EPA has registered products containing the technical grade of the active ingredient sodium carbonate peroxyhydrate for applications in aquaculture, rice/wild rice fields and paddies, turf grasses, terrestrial landscapes, as well as commercial greenhouses, nurseries and garden centers. References: Sodium Carbonate Peroxyhydrate (128860) Products, *http://www.epa.gov/pesticides/biopesticides/ingredients/product/prod_128860.htm*; EPA Pesticide Product Label System (PPLS), *http://oaspub.epa.gov/pestlabl/*

ppls.home, search by product registration numbers.

Due to the rapid breakdown of sodium carbonate peroxyhydrate in the environment, the EPA has determined that this substance does not present ecological hazards when applied in accordance with the label directions. The EPA also found that toxicological risks from human exposure to sodium carbonate peroxyhydrate were negligible. Sodium carbonate peroxyhydrate is a corrosive material and wearing protective gear during handling can prevent potential skin damage and eye irritation. References: Sodium Carbonate Peroxyhydrate Technical Evaluation Report compiled by ICF International for the NOP, August 11, 2006, *http://tinyurl.com/an8qmv;* EPA Biopesticides Registration Action Document, Sodium Carbonate Peroxyhydrate, September 16, 2002, *http://www.epa.gov/pesticides/biopesticides/ingredients/tech_docs/brad_128860.pdf*; NOSB final recommendation, November 30, 2007, *http://tinyurl.com/bacvg8;* NOSB meeting transcripts, November 2007, *http://tinyurl.com/bqqzv8.*

At its November 27–30, 2007, meeting in Arlington, VA, the NOSB recommended adding sodium carbonate peroxyhydrate to the National List for use in organic crop production as an algaecide. In this open meeting, the NOSB evaluated sodium carbonate peroxyhydrate against the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA, received public comment, and concluded that sodium carbonate peroxyhydrate is consistent with the OFPA evaluation criteria.

The NOP engaged in consultations with the EPA and FDA. The EPA informed the NOP that the use of this substance would be consistent with EPA regulations only when applied in accordance with the product label. Further, the EPA explained that applications in organic food crop production must be consistent with the approved food uses which are identified on a product label. Product labels for algaecides containing sodium carbonate peroxyhydrate are approved for use by the EPA. To clarify this requirement, AMS proposes adding an annotation providing that federal law restricts the use of this substance in food crop production to approved food uses identified on the product label.

Concerning the use of sodium carbonate peroxyhydrate, the FDA deferred to EPA as the appropriate regulatory body. Therefore, after consultation with the EPA and FDA regarding NOSB's recommendation to permit the use of sodium carbonate peroxyhydrate in organic crop production, the Secretary is proposing to accept the NOSB's recommendation and amend § 205.601(a) of the National List by adding sodium carbonate peroxyhydrate at new paragraph (a)(8) as an algaecide as follows:

Sodium carbonate peroxyhydrate (CAS #—15630–89–4)—federal law restricts the use of this substance in food crop production to approved food uses identified on the product label.

This proposed rule would further amend § 205.601 of the National List by (1) removing the expired exemption at paragraph (m)(2)(i); and (2) redesignating current paragraph (m)(2)(ii) as (m)(2). Glycerine Oleate (Glycerol monooleate) (CAS#s 37220–82–9)—for use only until December 31, 2006, is currently listed at (m)(2)(i). Removal of this substance has no new regulatory effect. When this exemption was enacted on September 11, 2006 (71 FR 53299), Glycerine oleate was classified by EPA as a List 3 inert (Inerts of Unknown Toxicity). The EPA has not reclassified this form of Glycerine oleate as a List 4—Inerts of Minimal Concern, which are allowed in organic crop production unless individually prohibited, and therefore, this substance has been prohibited from use in organic crop production since December 31, 2006.

Section 205.605 Nonagricultural (nonorganic) Substances Allowed as Ingredients in or on Processed Products Labeled as ''Organic'' or ''Made with Organic (Specified Ingredients or Food Group(s)).''

This proposed rule would amend paragraph (a) of § 205.605 of the National List regulations by adding the following substance:

Gellan gum (CAS #—71010–52–1). Gellan gum was petitioned for use as a food additive in organic processing. It is a water soluble, off-white powder that forms gels in the presence of positively charged ions. Gellan gum functions as a thickening agent to produce a wide range of textures in products, such as: Bakery fillings, confections, dairy products, dessert gels, frostings, icings and glazes, jams and jellies, puddings, sauces, and others. The gum is a high molecular weight polysaccharide which is produced through fermentation. The substance is deacylated and then precipated from the fermentation medium with isopropyl alcohol. The thickness of the gel can be manipulated for specific functions by the addition of potassium, magnesium, calcium, and/or sodium salts. Reference: Technical Evaluation Report compiled by ICF International for the USDA NOP, February 10, 2006, *http://tinyurl.com/bpuryq.*

The FDA has determined that gellan gum may be safely used in food in accordance with the prescribed conditions at 21 CFR 172.665. That regulation stipulates specific guidelines for the manufacturing process, specifications of the finished product, including maximum residual levels of isopropyl alcohol, and labeling requirements for its container. Gellan gum falls within FDA's definition of stabilizers and thickeners which may be used to achieve the technical and functional effects listed in 21 CFR 170.3(o)(28).

At its November 27–30, 2007, meeting in Arlington, VA, the NOSB recommended adding gellan gum as a nonsythetic substance for use in organic handling. In this open meeting, the NOSB evaluated gellan gum against the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA, received public comment, and concluded that gellan gum is consistent with the OFPA evaluation criteria. In response to the NOSB recommendation regarding gellan gum in organic handling, the Secretary is proposing to amend § 205.605(a) of the National List regulations to allow the use of gellan gum as a nonsynthetic nonagricultural substance allowed as an ingredient in or on processed products labeled as ''organic'' or ''made with organic specified ingredients or food group(s))'' as follows:

Gellan gum (CAS #—71010–52–1).

Gellan gum was petitioned for addition to the National List as a synthetic substance. The NOSB handling committee recommended that the material be added to the National List in Section 205.605, as a synthetic substance due to parallels in the manufacturing processes between xanthan gum and gellan gum, specifically, the use of fermentation and isopropyl alcohol (IPA) extraction in the production processes. Xanthan gum is currently listed as a synthetic substance on the National List. At the November 2007 meeting, the full NOSB voted to recommend gellan gum as a nonsynthetic substance. In this decision, the majority of NOSB members accepted that a substance does not qualify as a synthetic based solely upon the use of synthetic processing aid, IPA, in its manufacture. Further, the majority of the NOSB members agreed that the decision regarding gellan gum was not predicated upon that for xanthan gum. References: NOSB recommendations, November 30, 2007, *http://tinyurl.com/ajnvbq;* NOSB meeting transcripts, March 2007 and

November 2007, *http://tinyurl.com/bqqzv8.*

Section 205.606 Nonorganically Produced Agricultural Products Allowed as Ingredients in or on Processed Products Labeled as ''Organic.''

This proposed rule would amend § 205.606 of the National List regulations by (1) redesignating paragraphs (g) through (t) and (u) through (w) as paragraphs (h) through (u) and (w) through (y) respectively; and (2) adding new paragraphs (g) and (v) for the purpose of adding the following substances:

Fortified cooking wine—Marsala. Marsala cooking wine was petitioned for use as a nonorganic agricultural ingredient in or on processed products labeled as ''organic.'' This ingredient is used to impart a unique flavor to a variety of foods. Marsala is a dessert, or fortified wine, which is produced by adding yeast to the juice of crushed and pressed grapes. The addition of grape spirits stops the fermentation process at the desired sugar level. The wine is then heated for a specific time to reach a certain temperature and salt is added to prevent or slow further fermentation that would turn the Marsala wine into vinegar. The Marsala wine becomes a non-beverage, cooking wine with the addition of salt. The production of non-beverage wines is regulated by the Alcohol and Tobacco Tax and Trade Bureau (27 CFR 24.215) and the labeling falls within the jurisdiction of the FDA.

At its May 20–22, 2008, meeting in Baltimore, MD, the NOSB recommended adding fortified cooking wine—Marsala, to the National List for use in organic handling as a nonorganic agricultural ingredient when the organic form of Marsala cooking wine is determined to be commercially unavailable. In this open meeting, the NOSB evaluated Marsala cooking wine against the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA and NOP criteria (72 FR 2167, January 18, 2007) on commercial availability, received public comment, and concluded that the use of the substance in organic handling is consistent with the OFPA evaluation criteria and NOP commercial availability criteria. Specifically in regard to commercial availability, the NOSB cited scarcity of production as determined by an extensive search among fortified wine producers and organic wine producers. Therefore, in response to the NOSB recommendation regarding Marsala cooking wine in organic handling, the Secretary is proposing to amend § 205.606 of the National List regulations to allow fortified cooking wine—Marsala, at new paragraph (g) as a nonorganically produced agricultural product allowed as an ingredient in or on processed products labeled as ''organic'' as follows:

Fortified cooking wines.

(1) Marsala.

Fortified cooking wine—Sherry. Sherry cooking wine was petitioned for use as a nonorganic agricultural ingredient in or on processed products labeled as ''organic.'' This ingredient is used to impart a unique flavor to a variety of foods such as soups and entrees. Sherry is a dessert or fortified wine that is produced with the addition of spirits after fermentation. Fining and filtering of the wine occurs both before and after it is heated or baked. The addition of salt prevents the wine from turning to vinegar and produces a non-beverage cooking wine. The production of non-beverage wines is regulated by the Alcohol and Tobacco Tax and Trade Bureau (27 CFR 24.215) and the labeling falls within the jurisdiction of the FDA.

At its May 20–22, 2008, meeting in Baltimore, MD, the NOSB recommended adding fortified cooking wine—Sherry, to the National List for use in organic handling as a nonorganic agricultural ingredient where the organic form of Sherry cooking wine is considered commercially unavailable. In this open meeting, the NOSB evaluated Sherry cooking wine against the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA and NOP criteria (72 FR 2167, January 18, 2007) on commercial availability, received public comment, and concluded that the use of the substance in organic handling is consistent with the OFPA evaluation criteria and NOP commercial availability criteria. Specifically in regard to commercial availability, the NOSB cited a dearth of production among an extensive list of fortified wine producers and organic wine producers. Therefore, in response to the NOSB recommendation regarding Sherry cooking wine in organic handling, the Secretary is proposing to amend § 205.606 of the National List regulations to allow fortified cooking wine—Sherry, at new paragraph (g) as a nonorganically produced agricultural product allowed as an ingredient in or on processed products labeled as ''organic'' as follows:

Fortified cooking wines.

(2) Sherry.

Tragacanth gum (CAS #—9000–65–1). Tragacanth gum was petitioned for use as a nonorganic agricultural ingredient in or on processed products labeled as ''organic.'' Tragacanth gum is used to provide texture, viscosity and emulsion stability in foods such as salad dressings and sauces. Tragacanth gum has superior stability in acidic conditions and over a broader temperature range than other water-soluble gums. Tragacanth gum is harvested from the stems and branches of *Astragalus gummifer* Labillardiere and other Asiatic species of *Astragalus* (Fam. *Leguminosae*) in the desert and arid areas of the Middle East, specifically Iran and neighboring countries. The dried gum that exudes from the plant is cleaned, mechanically cut, dissolved in water and filtered. Tragacanth gum is a polysaccharide composed of 2 fractions, one of which is water soluble. It is typically available as a spray-dried powder which forms a gel when rehydrated with water, or oil prior to water, and agitated. The FDA has affirmed that tragacanth gum is a generally regarded as safe (GRAS) substance and established maximum usage levels according to the type of food (21 CFR 184.1351).

At its May 20–22, 2008, meeting in Baltimore, MD, the NOSB recommended adding tragacanth gum to the National List for use in organic handling as a nonorganic agricultural ingredient where the organic form of tragacanth gum is considered commercially unavailable. In this open meeting, the NOSB evaluated tragacanth gum against the evaluation criteria of 7 U.S.C. 6517 and 6518 of the OFPA and NOP criteria (72 FR 2167, January 18, 2007) on commercial availability, received public comment, and concluded that the use of the substance in organic handling is consistent with the OFPA evaluation criteria and NOP commercial availability criteria. Specifically with regard to the commercial availability criteria, the NOSB cited trade difficulties as the major challenge to a consistent supply, as the global supply of this ingredient is produced in Iran and neighboring countries. The NOSB recommended placement of tragacanth gum on the National List at § 205.606(j), Gums—water extracted only. As an exudate, the raw tragacanth gum is not harvested or processed using extraction. Accordingly, the NOP has determined that tragacanth gum does not belong in paragraph (j) but should have its own paragraph. Therefore, in response to the NOSB recommendation regarding tragacanth gum in organic handling, the Secretary is proposing to amend § 205.606 of the National List regulations to allow tragacanth gum at new paragraph (v) as a nonorganically produced agricultural product allowed as an ingredient in or on processed products labeled as ''organic'' as follows:

Tragacanth gum (CAS #—9000–65–1).

III. Related Documents

Three notices were published regarding the meetings of the NOSB and its deliberations on recommendations and substances petitioned for amending the National List. Substances and recommendations included in this proposed rule were announced for NOSB deliberation in the following **Federal Register** Notices: (1) 72 FR 10972, March 12, 2007, (Gellan gum); (2) 72 FR 58046, October 12, 2007, (Potassium silicate, Sodium carbonate peroxyhydrate, Gellan gum); and (3) 73 FR 18491, April 4, 2008, (Marsala cooking wine, Sherry cooking wine, Tragacanth gum).

IV. Statutory and Regulatory Authority

The OFPA, as amended (7 U.S.C. 6501 *et seq.*), authorizes the Secretary to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k)(2) and 6518(n) of the OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. The National List petition process is implemented under § 205.607 of the NOP regulations. The current petition process (72 FR 2167, January 18, 2007) can be accessed through the NOP Web site at *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5048809&acct=nopgeninfo.*

A. Executive Order 12866

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

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This proposed rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in section 2115(b) of the OFPA (7 U.S.C. 6514(b)). States are also preempted under section 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to section 2120(f) of the OFPA (7 U.S.C. 6519(f)), this proposed rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, the AMS performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000 (65 FR 80548). The AMS has also considered the economic impact of this action on small entities. The impact on entities affected by this proposed rule would not be significant. The effect of this proposed rule would be to allow the use of additional substances in agricultural production and handling. This action would relax the regulations published in the final rule and would provide small entities with more tools to use in day-to-day operations. The AMS concludes that the economic impact of this addition of allowed substances, if any, would be minimal and beneficial to small agricultural service firms. Accordingly, USDA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000.

According to USDA, Economic Research Service (ERS) data based on information from USDA-accredited certifying agents, the U.S. organic industry included nearly 6,949 certified organic crop and livestock operations at the end of 2001. These operations reported certified acreage totaling more than 2.09 million acres of organic farm production. By the end of 2005, the number of U.S. certified organic crop and livestock operations totaled about 8,500 and certified organic acreage exceeded 4 million acres. ERS, based upon information provided by domestic accredited certifying agents, estimated the number of certified handling operations as exceeding 2,790 in 2004. AMS believes that most of these entities would be considered small entities under the criteria established by the SBA.

The U.S. sales of organic food and beverages have grown from $1 billion in 1990 to nearly $17 billion in 2006. The organic industry is viewed as the fastest growing sector of agriculture, representing almost 3 percent of overall food and beverage sales. Since 1990, organic retail sales have historically

demonstrated a growth rate between 20 to 24 percent each year, including a 22 percent increase in 2006.

In addition, USDA has 97 accredited certifying agents who provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop.* AMS believes that most of these accredited certifying agents would be considered small entities under the criteria established by the SBA.

D. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by section 350(h) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.,* or OMB's implementing regulation at 5 CFR part 1320.

The AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

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

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205, Subpart G is proposed to be amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

2. Section 205.601 is amended by:

A. Adding new paragraph (a)(8);

B. Redesignating paragraphs (e)(2) through (e)(9) as (e)(3) through (e)(10) and adding new paragraph (e)(2);

C. Redesignating paragraphs (i)(1) through (i)(11) as (i)(2) through (i)(12); and adding new paragraph (i)(1); and

D. Revising paragraph (m)(2).

The additions and revision read as follows:

§ 205.601 Synthetic substances allowed for use in organic crop production.

* * * * *

(a) * * *

(8) Sodium carbonate peroxyhydrate (CAS #—15630–89–4)—federal law restricts the use of this substance in food crop production to approved food uses identified on the product label.

* * * * * *

(e) * * *

(2) Aqueous potassium silicate (CAS #—1312–76–1)—The silica, used in the manufacture of potassium silicate, must be sourced from naturally occurring sand.

* * * * *

(i) * * *

(1) Aqueous potassium silicate (CAS #—1312–76–1)—The silica, used in the manufacture of potassium silicate, must be sourced from naturally occurring sand.

* * * * *

(m) * * *

(2) EPA List 3—Inerts of unknown toxicity—for use only in passive pheromone dispensers.

* * * * *

2. Section 205.605 is amended by adding one new substance in alphabetical order to paragraph (a) to read as follows:

§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s)).''

* * * * *

(a) * * *

* * * * *

Gellan gum (CAS #—71010–52–1)

* * * * *

3. Section 205.606 is amended by:

A. Redesignating paragraphs (g) through (t) and (u) through (w) as paragraphs (h) through (u) and (w) through (y) respectively;

B. Adding new paragraphs (g) and (v) to read as follows:

§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as ''organic.''

* * * * *

(g) Fortified cooking wines.

(1) Marsala.

(2) Sherry.

* * * * *

(v) Tragacanth gum (CAS #—9000–65–1).

* * * * *

Dated: May 28, 2009.

Robert C. Keeney,

Acting Associate Administrator.

[FR Doc. E9–12818 Filed 6–2–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2008–BT–STD–0013]

RIN 1904–AB83

Energy Conservation Program for Certain Industrial Equipment: Energy Conservation Standards for Commercial Heating, Air-Conditioning, and Water-Heating Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of data availability and request for public comment.

SUMMARY: The U.S. Department of Energy (DOE) is announcing the availability of an environmental assessment (EA) to accompany its notice of proposed rulemaking (NOPR) considering potential energy conservation standards for certain commercial and industrial equipment, including commercial heating, air-conditioning, and water-heating equipment, published in the **Federal Register** on March 20, 2009. Specifically, this EA includes a concise examination of the impacts of emission reductions likely to result from the proposed standards for commercial packaged boilers and water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h. The EA has been incorporated as Chapter 8 in the NOPR technical support document (TSD). In addition, Chapter 9 of the NOPR TSD provides the results of DOE's monetization analysis of these potential emission reductions. These materials are available online (see **ADDRESSES**). DOE specifically requests that interested members of the public, Tribes, and States comment on the EA.

DATES: DOE will accept comments, data, and information regarding the subject matter of this NODA submitted no later than June 18, 2009.

ADDRESSES: Any comments submitted must identify the NODA for Energy Conservation Standards for ASHRAE Products, and provide the docket number EERE–2008–BT–STD–0013 and/or Regulatory Information Number

(RIN) 1904–AB83. Comments may be submitted using any of the following methods:

• *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

• *E-mail: ASHRAE_90.1_rulemaking@ee.doe.gov.* Include the docket number EERE–2008–BT–STD–0013 and/or RIN number 1904–AB83 in the subject line of the message.

• *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. Please submit one signed paper original.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information about visiting the Resource Room.

The results of DOE's monetization analysis of potential emission reductions materials are available online at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/ashrae_products_nopr.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7892. E-mail: *Mohammed.Khan@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mailstop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov.*

For information on how to submit public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. E-mail: *Brenda.Edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: The Energy Policy and Conservation Act of 1975 (EPCA) (42 U.S.C. 6291 *et seq.*), as amended, directs DOE to establish energy conservation standards for certain commercial and industrial equipment, including commercial heating, air-conditioning, and water-heating equipment. Of particular relevance here, the statute also requires that each time the corresponding industry standard—the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE)/Illuminating Engineering Society of North America (IESNA) Standard 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings*—is amended, DOE must assess whether there is a need to update the uniform national energy conservation standards for the same equipment covered under EPCA. ASHRAE officially released an amended version of this industry standard (ASHRAE Standard 90.1–2007) on January 10, 2008, thereby triggering DOE's related obligations under EPCA.

DOE published a NOPR proposing amended energy conservation standards for commercial packaged boilers and water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h at the efficiency levels specified by ASHRAE Standard 90.1–2007. 74 FR 12000 (March 20, 2009). DOE outlined its review of ASHRAE Standard 90.1–2007 and a determination of scope for the rulemaking in the March 2009 NOPR. In addition, the NOPR discussed the analytical framework used to evaluate ASHRAE equipment, the analytical models and tools that DOE is using to evaluate amended energy conservation standards for this equipment, and the results of the various rulemaking analyses performed by DOE. Finally, in the NOPR, DOE outlined its preliminary conclusions and the proposed standards for these two equipment types.

As noted above, this NODA announces the availability for public comment of an environmental assessment of the proposed energy conservation standards in the March 20, 2009, NOPR. The EA assesses the impacts of the proposed rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with the National Environmental Policy Act (10 CFR part 1021). This EA includes a concise examination of the impacts of emission reductions likely to result from the proposed standards for commercial packaged boilers and water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h. The EA has been incorporated as Chapter 8 in the NOPR TSD. In addition, Chapter 9 of the NOPR TSD provides the results of DOE's monetization analysis of these potential emission reductions. These materials are available online at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/ashrae_products_nopr.html.* DOE specifically requests that interested members of the public, Tribes, and States comment on the EA.

Issued in Washington, DC, on May 29, 2009.

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E9–12958 Filed 6–2–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

[REG–119532–08]

RIN 1545–BH94

Section 2036—Graduated Retained Interests; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–119532–08) that was published in the **Federal Register** on Thursday, April 30, 2009, at 74 FR 19913. The corrections relate to proposed regulations that provide guidance on the portion of trust property includible in the grantor's gross estate if the grantor has retained the use of the property, the right to an annuity, unitrust, graduated retained interest, or other payment from such property for life, for any period not ascertainable without reference to the grantor's death, or for a period that does not in fact end before the grantor's death.

FOR FURTHER INFORMATION CONTACT: Theresa M. Melchiorre, (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this document is under section 2036 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–119532–08) that published on April 30, 2009 (74 FR 19913) does not accurately reflect the information intended to be communicated and thus needs clarification.

Correction to Publication

Accordingly, the notice of proposed rulemaking which was the subject of FR Doc. E9–10003 is corrected as follows:

On page 19917, § 20.2036–1 (c)(2)(iii) *Example 7* (iii), the chart at the top of the page is corrected to read as follows:

§ 20.2036–1 Transfers with retained life estate.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

Example 7. * * *

(iii) * * *

		Year 3	Year 4	Year 5	Amount required to generate annuity
Additional annuity	$34,560	Deferral period		$453,026	$453,026
Additional annuity	$28,800	Deferral period	$403,193		$403,193
Annuity in year of death	$144,000	$2,117,647			$2,117,647
Total amount (sum) included in gross estate					$2,973,866

* * * * *

Cynthia E. Grigsby,

Senior Federal Register Liaison Officer, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E9–12855 Filed 6–2–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 002–2009]

Privacy Act of 1974; Implementation

AGENCY: Criminal Division, Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Criminal Division (CRM), Department of Justice, proposes to amend its Privacy Act regulations for a newly modified Privacy Act system of records entitled ''Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center System,'' JUSTICE/CRM–028, as described in today's notice section of the Federal Register. The ''Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center System,'' JUSTICE/CRM–028, will be exempt from the subsections of the Privacy Act listed below for the reasons set forth in the following text. Information in this system of records relates to matters of law enforcement, and the exemptions are necessary to avoid interference with law enforcement responsibilities and to protect the privacy of third parties.

DATES: Submit any comments by July 6, 2009.

ADDRESSES: Address all comments to Robin Moss, Privacy Analyst, Office of Privacy and Civil Liberties, Department of Justice, 1331 Pennsylvania Avenue, Room 940, Washington, DC 20530. To ensure proper handling, please reference the CPCLO Order No. on your correspondence. You may view an electronic version of this proposed rule at *www.regulations.gov.* You may also comment via the Internet to the DOJ Office of Privacy and Civil Liberties at the following e-mail address: *DOJPrivacyACTProposedRegulations@usdoj.gov;* or by using the *www.regulations.gov* comment form for this regulation. When submitting comments electronically, you must include the CPCLO Order No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Robin Moss, 202–514–0208.

SUPPLEMENTARY INFORMATION: This proposed rule seeks to amend 28 CFR 16.91 paragraphs (u) and (v) as set forth below. These modified paragraphs exempt the ''Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center System,'' JUSTICE/CRM–028, from certain provisions of the Privacy Act of 1974, as amended.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information, Sunshine Act and Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 2940–2008, it is proposed to amend 28 CFR part 16 as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717 and 9701.

2. Section 16.91 is amended by revising paragraphs (u) and (v) to read as follows:

§ 16.91 Exemption of Criminal Division Systems—limited access, as indicated.

(u) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j) and/or (k) from subsections (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), (3), (4)(G), (H) and (I), (5) and (8); (f) and (g) of 5 U.S.C. 552a: Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center System (JUSTICE/CRM–028). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) and/or (k).

(v) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because to provide the subject with an accounting of disclosures of records in this system could inform that individual of the existence, nature, or scope of an actual or potential law enforcement or counterintelligence investigation by the Organized Crime Drug Enforcement Task Force Fusion Center, the International Organized Crime Intelligence and Operations Center, or the recipient agency, and could permit that individual to take measures to avoid detection or apprehension, to learn the identity of witnesses and informants, or to destroy evidence, and would therefore present a serious impediment to law enforcement or counterintelligence efforts. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record. Moreover, release of an accounting may reveal information that is properly classified pursuant to Executive Order and could compromise the national defense or foreign policy.

(2) From subsection (c)(4) because this subsection is inapplicable to the extent that an exemption is being claimed for subsections (d)(1), (2), (3), and (4).

(3) From subsection (d)(1) because disclosure of records in the system could alert the subject of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of confidential witnesses and informants, of the investigative interest of Organized Crime Drug Enforcement Task Force Fusion Center, International Organized Crime Intelligence and Operations Center, and other intelligence or law enforcement agencies (including those responsible for civil proceedings related to laws against drug trafficking or related financial crimes or international organized crime); lead to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; reveal the details of a sensitive investigative or intelligence technique, or the identity of a confidential source; or otherwise impede, compromise, or interfere with investigative efforts and other related law enforcement and/or intelligence activities. In addition, disclosure could invade the privacy of third parties and/or endanger the life, health, and physical safety of law enforcement personnel, confidential informants, witnesses, and potential crime victims. Access to records could also result in the release of information properly classified pursuant to Executive Order, thereby compromising the national defense or foreign policy.

(4) From subsection (d)(2) because amendment of the records thought to be incorrect, irrelevant, or untimely would also interfere with ongoing investigations, criminal or civil law enforcement proceedings, and other law enforcement activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised, as well as may impact information properly classified pursuant to Executive Order.

(5) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) From subsection (e)(1) because, in the course of its acquisition, collation, and analysis of information under the statutory authority granted to them, both the Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center will occasionally obtain information, including information properly classified pursuant to Executive Order, that concern actual or potential violations of law that are not strictly within its statutory or other authority or may compile information in the course of an investigation which may not be relevant to a specific prosecution. It is impossible to determine in advance what information collected during an investigation will be important or crucial to the apprehension of fugitives. In the interests of effective law enforcement, it is necessary to retain such information in this system of records because it can aid in establishing patterns of criminal activity and can provide valuable leads for federal and other law enforcement agencies. This consideration applies equally to information acquired from, or collated or analyzed for, both law enforcement agencies and agencies of the U.S. foreign intelligence community and military community.

(7) From subsection (e)(2) because in a criminal, civil, or regulatory investigation, prosecution, or proceeding, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation, prosecution, or proceeding would be placed on notice as to the existence and nature of the investigation, prosecution, and proceeding and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, thorough and effective investigation and prosecution may require seeking information from a number of different sources.

(8) From subsection (e)(3) (to the extent applicable) because the requirement that individuals supplying information be provided a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants and endanger their lives, health, and physical safety. The individual could seriously interfere with undercover investigative techniques and could take appropriate steps to evade the investigation or flee a specific area.

(9) From subsections (e)(4)(G), (H) and (I) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(10) From subsection (e)(5) because the acquisition, collation, and analysis of information for law enforcement purposes from various agencies does not permit a determination in advance or a prediction of what information will be matched with other information and thus whether it is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation

brings new details to light and the accuracy of such information can often only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators, intelligence analysts, and government attorneys to exercise their judgment in collating and analyzing information and would impede the development of criminal or other intelligence necessary for effective law enforcement.

(11) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement by revealing investigative techniques, procedures, evidence, or interest and interfering with the ability to issue warrants or subpoenas, and could give persons sufficient warning to evade investigative efforts.

(12) From subsections (f) and (g) because these subsections are inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: May 28, 2009.

Kirsten J. Moncada,

Acting Chief Privacy and Civil Liberties Officer.

[FR Doc. E9–12859 Filed 6–2–09; 8:45 am]

BILLING CODE 4410–14–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0314; FRL–8906–2]

Revisions to the California State Implementation Plan, San Diego Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Diego Air Pollution Control District (SDAPCD) portion of the California State Implementation Plan (SIP). The revisions concern the permitting of air pollution sources. We are proposing to approve SDAPCD Rule 27.1—Federal Requirements for the San Diego County Air Pollution Control District's Alternative Mobile Source Emission Reduction Program Approved on September 8, 2000, which is a local rule that regulates air pollution sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by July 6, 2009.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0314, by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
- *E-mail: R9airpermits@epa.gov.*
- *Mail or deliver:* Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Shaheerah Kelly, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 947–4156, *kelly.shaheerah@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: Rule 27.1—Federal Requirements for the San Diego County Air Pollution Control District's Alternative Mobile Source Emission Reduction Program Approved on September 8, 2000. In the Rules and Regulations section of this **Federal Register,** we are approving this local rule in a direct final action without prior proposal because we believe the SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 7, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. E9–12790 Filed 6–2–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1406–P2]

RIN 0938–AP39

Medicare Program; Proposed Rate Year (RY) 2010 Medicare Severity-Long-Term Care Diagnosis-Related Group (MS–LTC–DRG) Relative Weights and High-Cost Outlier Fixed-Loss Amount

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule; supplemental.

SUMMARY: This supplemental proposed rule presents both proposed rate year (RY) 2010 Medicare severity-long-term care diagnosis-related group (MS–LTC–DRG) relative weights and a proposed RY 2010 high cost outlier (HCO) fixed-loss amount based on the revised fiscal year (FY) 2009 MS–LTC–DRG relative weights presented in an interim final rule with comment period published elsewhere in this **Federal Register**.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 30, 2009.

ADDRESSES: In commenting, please refer to file code CMS–1406–P2. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1406–P2, P.O. Box 8011, Baltimore, MD 21244–8011.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1406–P2, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses: a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter, (410) 786–4487.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

A. Legislative and Regulatory Authority

Section 123 of the Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) as amended by section 307(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554) provides for payment for both the operating and capital-related costs of hospital inpatient stays in long-term care hospitals (LTCHs) under Medicare Part A based on prospectively set rates. The Medicare prospective payment system (PPS) for LTCHs applies to hospitals that are described in section 1886(d)(1)(B)(iv) of the Social Security Act (the Act), effective for cost reporting periods beginning on or after October 1, 2002.

In the August 30, 2002 (67 FR 55954) **Federal Register**, we issued a final rule that implemented the LTCH PPS authorized under the BBRA and BIPA. The same final rule established regulations for the LTCH PPS under 42 CFR Part 412, Subpart O. This system currently uses information from LTCH patient records to classify patients into distinct Medicare Severity-long-term care diagnosis-related groups (MS–LTC–DRGs) based on clinical characteristics and expected resource needs. Payments are calculated for each MS–LTC–DRG and provisions are made for appropriate payment adjustments. Payment rates under the LTCH PPS are updated annually and published in the **Federal Register**. We refer readers to the August 30, 2002 (67 FR 55954) final rule for a comprehensive discussion of the research and data that supported the establishment of the LTCH PPS.

B. Annual Updates to the LTCH PPS

For RYs 2004 through 2009, annual payment rate update and policy changes under the LTCH PPS were effective beginning on July 1 of each year (RY 2009 is the 15-month rate period July 1, 2008 through September 30, 2009 (see § 412.503)). However, the annual update of the LTC–DRG (and, beginning in FY 2008, the MS–LTC–DRG) classifications and relative weights for LTCHs are linked to the annual update of the acute care hospital inpatient prospective payment system (IPPS) DRGs and are effective each October 1.

The most recent annual update to the payment rates and policy changes under the LTCH PPS was established in the RY 2009 LTCH PPS final rule (73 FR 26788 through 26874), and is currently effective for the 15-month rate year of July 1, 2008 through September 30, 2009. The most recent annual update to the MS–LTC–DRGs was established in the FY 2009 IPPS final rule (73 FR 48528 through 48551), and is currently effective October 1, 2008 through September 30, 2009. In an interim final rule with comment period published elsewhere in this **Federal Register**, we revised the FY 2009 MS–LTC–DRG relative weights. The revised FY 2009 MS–LTC–DRG relative weights are effective for the remainder of FY 2009 (that is, from June 3, 2009 through September 30, 2009).

Beginning October 1, 2009, the annual updates to the LTCH PPS rates, and factors, including the MS–LTC–DRG relative weights, and other payment policy changes are effective on October 1. The proposed changes to the LTCH PPS payment rates, factors, and other payment policies under the LTCH PPS for RY 2010, including the proposed standard federal rate, proposed MS–LTC–DRG relative weights and proposed high cost outlier fixed-loss amount, are presented in the proposed rule entitled ''Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and Fiscal Year 2010 Rates and to the Long-Term Care Hospital Prospective Payment System and Rate Year 2010 Rates'' issued in the May 22, 2009 **Federal Register** (74 FR 24080) and hereinafter referred to as the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule. These proposed changes would be applicable to LTCH PPS discharges occurring on or after October 1, 2009.

II. Provisions of the Proposed Regulations

A. Proposed RY 2010 MS–LTC–DRG Relative Weights

Beginning with the FY 2008 update, we established a budget neutral requirement for the annual update to the MS–LTC–DRG classifications and relative weights at 42 CFR 412.517(b) (in conjunction with § 412.503), such that estimated aggregate LTCH PPS payments would be unaffected, that is, would be neither greater than nor less than the estimated aggregate LTCH PPS payments that would have been made without the classification and relative weight changes. (See the May 11, 2007 LTCH PPS final rule (72 FR 26882 through 26884).)

Consistent with § 412.517(b), we apply a two-step budget neutrality methodology, which is based on the current year MS–LTC–DRG classifications and relative weights. (For additional information on the established two-step budget neutrality methodology, refer to the FY 2008 IPPS final rule (72 FR 47295 through 47296).) Thus, the annual update to the MS–LTC–DRG classifications and relative weights for RY 2010 will be based on the FY 2009 MS–LTC–DRG classifications and relative weights. In the FY 2010 IPPS and LTCH PPS proposed rule (74 FR 24218 through 24227), we proposed RY 2010 MS–LTC–DRG relative weights based on the FY 2009 MS–LTC–DRG relative weights published in the FY 2009 IPPS final rule (73 FR 48528 through 48551 and 49041 through 49062). In an interim final rule with comment period published elsewhere in this **Federal Register**, we have revised the published FY 2009 MS–LTC–DRG relative weights based on the appropriate application of the FY 2009 budget neutrality factor determined consistent with our established methodology.

Based on the revised FY 2009 MS–LTC–DRG relative weights published in an interim final rule with comment period published elsewhere in this **Federal Register**, we are proposing budget neutral RY 2010 MS–LTC DRG relative weights in this supplemental proposed rule.

Specifically, we are proposing to apply the same two-step budget neutrality methodology described in the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24226 through 24227), which involves calculating and applying a proposed normalization factor and a proposed budget neutrality factor to determine proposed budget neutral MS–LTC DRG relative weights for RY 2010. These proposed RY 2010 MS–LTC–DRG relative weights, which would be effective for LTCH PPS discharges occurring on after October 1, 2009 through September 30, 2010, are shown in Table 11 (Amended) of this supplemental proposed rule. We recalibrated the MS–LTC–DRG relative weights using FY 2008 LTCH claims data from the December 2008 update of the MedPAR files, as described in section VIII.B.3. of the preamble of the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24218 through 24226). After recalibration, we applied our two-step budget neutrality methodology. First we calculated a proposed normalization factor of 1.07264 using the following steps: (1) We used the most recent available LTCH claims data (FY 2008) and grouped them using the proposed RY 2010 GROUPER (Version 27.0) and the proposed recalibrated RY 2010 MS–LTC–DRG relative weights to calculate the average case-mix index (CMI); (2) we grouped the same LTCH claims data (FY 2008) using the FY 2009 GROUPER (Version 26.0) and the revised FY 2009 MS–LTC–DRG relative weights shown in Table 11 of the interim final rule with comment period published elsewhere in this **Federal Register** to calculate the average CMI; and (3) we computed the ratio of these average CMIs by dividing the average CMI for FY 2009 (determined in Step 2) by the average CMI for RY 2010 (determined in Step 1). In determining the proposed RY 2010 MS–LTC–DRG relative weights, each recalibrated proposed MS–LTC–DRG relative weight is multiplied by 1.07264 in the first step of the proposed budget neutrality process to produce proposed RY 2010 ''normalized relative weights.''

In the second step of the proposed RY 2010 budget neutrality methodology, we determined a proposed budget neutrality factor of 0.993343 using the following steps: (1) We simulated estimated total RY 2010 LTCH PPS payments using the proposed RY 2010 MS–LTC–DRG classifications (proposed GROUPER Version 27.0) and the proposed normalized RY 2010 MS–LTC–DRG relative weights; (2) we simulated estimated total RY 2009 LTCH PPS payments using the FY 2009 GROUPER (Version 26.0) and the revised FY 2009 MS–LTC–DRG relative weights shown in Table 11 of the interim final rule with comment period published elsewhere in this **Federal Register**; and (3) we calculated the ratio of these simulated estimated total LTCH PPS payments by dividing the estimated total RY 2009 LTCH PPS payments using the FY 2009 GROUPER and revised FY 2009 MS–LTC–DRG relative weights (determined in Step 2) by the estimated total RY 2010 LTCH PPS payments using the proposed RY 2010 GROUPER and the proposed RY 2010 normalized MS–LTC–DRG relative weights (determined in Step 1). Then, each of the proposed RY 2010 normalized relative weights is multiplied by the proposed RY 2010 budget neutrality adjustment factor of 0.993343 to determine the proposed budget neutral RY 2010 relative weight for each proposed MS–LTC–DRG.

The proposed RY 2010 MS–LTC–DRG relative weights, that would be effective for LTCH PPS discharges occurring on after October 1, 2009 through September 30, 2010, are shown in Table 11 (Amended) of this supplemental proposed rule. These proposed RY 2010 MS–LTC–DRG relative weights reflect the application of the proposed RY 2010 normalization factor of 1.07264 and the proposed RY 2010 budget neutrality factor 0.993343. (For the convenience of the reader, in addition to the proposed budget neutral RY 2010 MS–LTC–DRG relative weights, Table 11 (Amended) also includes the proposed geometric mean length of stay and five-sixths of the geometric mean length of stay (Short-Stay Outlier (SSO) Threshold for payments under § 412.529) for each proposed MS–LTC–DRG for RY 2010.) The proposed RY 2010 MS–LTC–DRG relative weights do not affect the calculation of the geometric mean length of stay and the SSO threshold for RY 2010 that were presented in Table 11 of the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74FR 24589 through 24608).

B. Proposed RY 2010 High Cost Outlier Fixed-Loss Amount

In the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24268 through 24269), we proposed a high cost outlier (HCO) fixed-loss amount of $16,059 for RY 2010 to maintain that total estimated HCO payments are projected to equal 8 percent of total estimated payments under the LTCH PPS as required under § 412.523(d)(1). This proposed HCO fixed-loss amount of $16,059 for RY 2010 was calculated based in part on the proposed RY 2010 MS–LTC–DRG relative weights presented in Table 11 of that same proposed rule (74 FR 24589 through 24608). Because the estimated payment for most LTCH PPS cases, including any applicable HCO payment, is based in-part on the proposed relative weight of the MS–LTC–DRG presented, in this supplemental proposed rule, we have determined based on the proposed RY 2010 MS–LTC–DRG relative weights presented in Table 11 (Amended) of this

supplemental proposed rule, a proposed fixed-loss amount of $18,868 for RY 2010, which would maintain that total estimated HCO payments are projected to equal 8 percent of total estimated payments under the LTCH PPS in RY 2010.

To determine the proposed fixed-loss amount for RY 2010 for this supplemental proposed rule, we are proposing to use the same proposed methodology used to calculate the proposed RY 2010 fixed-loss amount in the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24268). Specifically, we propose to use LTCH claims data from the December 2008 update of the FY 2008 MedPAR files and cost-to-charge (CCRs) from the December 2008 update of the provider-specific file (PSF) to calculate the proposed RY 2010 fixed-loss amount. Furthermore, we propose to calculate the proposed RY 2010 fixed-loss amount using the MS–LTC–DRG classifications and relative weights from the version of the GROUPER that will be in effect as of the beginning of RY 2010 (October 1, 2009), that is, proposed Version 27.0 of the GROUPER and the proposed RY 2010 MS–LTC–DRG relative weights presented in Table 11 (Amended) of this supplemental proposed rule.

Applying the proposed methodology described above, we have determined that a proposed RY 2010 fixed-loss amount of $18,868 would result in estimated HCO payments equal to 8 percent of estimated total LTCH PPS payments, as required under § 412.523(d)(1), for LTCH PPS discharges occurring during RY 2010. Therefore, in this supplemental proposed rule, under the broad authority of section 123(a)(1) of the BBRA and section 307(b)(1) of BIPA, we are proposing a fixed-loss amount for RY 2010 of $18,868. The proposed RY 2010 fixed-loss amount of $18,868 would be effective for LTCH PPS discharges occurring on October 1, 2009 through September 30, 2010. Thus, for RY 2010, we would propose to pay a HCO case 80 percent of the difference between the estimated cost of the case and the proposed outlier threshold (the sum of the proposed adjusted Federal LTCH payment for the discharge and the proposed fixed-loss amount of $18,868).

As we proposed in the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule and consistent with our historical practice of using the most recent data available, we are proposing in this supplemental proposed rule that if more recent LTCH data become available, we will use them for determining the fixed-loss amount for RY 2010 in the final rule.

III. Waiver of 60-Day Comment Period

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and permit a 60-day comment period, as provided in section 1871(b)(1) of the Act. This period, however, may be shortened, as provided under section 1871(b)(2)(C), when the Secretary finds good cause that a 60-day comment period would be impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. For this supplemental proposed rule, we are waiving the 60-day comment period for good cause and allowing a comment period that coincides with the comment period provided for on the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24080).

Ordinarily, we begin our preparations for issuing an LTCH PPS proposed rule early so that our proposals may be on public display by May 1 of that year. This schedule allows for a 60-day comment period closing within a sufficient amount of time to also allow for a 1- to 2-month period to consider all comments received and appropriately respond to them. In this case, elsewhere in this **Federal Register** an interim final rule with public comment is issued that provides for revised FY 2009 MS–LTC–DRG relative weights. The revised MS–LTC–DRG relative weights affect some of the proposals contained in the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule, which went on display on May 1, 2009, and was published in the **Federal Register** on May 22, 2009. Therefore, we need to immediately replace those affected proposals. A 60-day comment period on this supplemental proposed rule would be both impracticable and contrary to the public interest because it would not allow for coordinated consideration of the comments on this supplemental proposed rule with those on the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule. Because the issues raised in this supplemental proposed rule are integral to our consideration of comments on certain proposals in the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule, we do not believe it would be appropriate to review comments on the issues raised in this supplemental proposed rule in isolation from the comments received on the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule. We further note that a full 60-day comment period would end on a date that would not allow the agency sufficient time to process the comments and respond to them in a meaningful manner by the August 1, 2009 date for issuing the final rule. Timely filed comments would receive a shorter period of time for consideration by the agency, and the agency would be left with insufficient time to properly respond to comments and appropriately resolve whether any of the proposed policies should be modified in light of comments received. For all of these reasons, we find good cause to waive the 60-day comment period for this rule of proposed rulemaking, and we are instead providing for a comment period that coincides with the comment period provided for on the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24080).

IV. 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).

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Regulatory Impact Analysis

A. Introduction and Overall Impact

In this section of this supplemental proposed rule, we discuss the impact of these proposed RY 2010 MS–LTC–DRG relative weights and proposed RY 2010 HCO threshold presented in the preamble of this supplemental proposed rule and the proposed rates, factors and policies presented in the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule, in terms of their estimated fiscal impact on the Medicare budget and on LTCHs. We note that this impact analysis replaces the analysis included in the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24079). As discussed in the interim final rule with comment period published elsewhere in this **Federal Register**, we are revising the FY 2009 MS–LTC–DRG relative weights. This prospective revision to the FY 2009 MS–LTC–DRG relative weights affects the determination of the proposed RY 2010 MS–LTC–DRG relative weights. The FY 2009 MS–LTC–

DRG relative weights (73 FR 48528 through 48552) were the basis for determining the proposed normalization factor and proposed budget neutrality factor that were applied in determining the proposed RY 2010 MS–LTC–DRG relative weights presented in the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24079). Consequently, based on this revision to the FY 2009 MS–LTC–DRG relative weights issued in an interim rule with comment period published elsewhere in this **Federal Register**, we are proposing budget neutral MS–LTC–DRG relative weights for RY 2010 and a HCO fixed loss amount for RY 2010 in this supplemental proposed rule.

We have examined the impacts of this rule 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 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). Based on the 399 LTCHs in our database, we estimate RY 2009 LTCH PPS payments based on the FY 2009 MS–LTC–DRG relative weights issued in an interim final rule with comment period published elsewhere in this **Federal Register**, to be approximately $4.634 billion and RY 2010 LTCH PPS payments to be approximately $4.735 billion.

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 government jurisdictions. Most hospitals and most other providers and suppliers are considered to be small entities, either by being nonprofit organizations or by meeting the Small Business Administration definition of a small business (having revenues of $34.5 million or less in any 1 year). (For details on the latest standards for health care providers, we refer readers to the Table of Small Business Size Standards for NAIC 622 found on the Small Business Administration Office of Size Standards Web site at: *http://www.sba.gov/contractingopportunities/officials/size/GC-SMALL-BUS-SIZE-STANDARDS.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. Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary LTCHs. Therefore, we are assuming that all LTCHs are considered small entities for the purpose of this analysis. Because we acknowledge that many of the affected entities are small entities, the analysis discussed throughout the preamble of this supplemental proposed rule constitutes our proposed regulatory flexibility analysis. Therefore, we are soliciting public comments on our estimates and analysis of the impact of this supplemental proposed rule on those small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed or final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. 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 LTCH PPS, 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 $133 million. This supplemental proposed rule will not mandate any requirements for State, local, or tribal governments, nor would 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. As stated above, this supplemental proposed rule would not have a substantial effect on State and local governments.

B. General Considerations

In the impact analysis of this supplemental proposed rule, we are using the revised FY 2009 MS–LTC–DRG relative weights as established in an interim final rule with comment period published elsewhere in this **Federal Register** and the rates, factors and policies established in the LTCH PPS RY 2009 final rule (73 FR 26788 through 24881) to estimate payments for the 2009 LTCH PPS rate year. To estimate payments for the RY 2010, we are using the proposed RY 2010 MS–LTC–DRG relative weights and the proposed RY 2010 HCO threshold presented in this supplemental proposed rule, and the proposed rates, factors, and policies presented in the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24079), including proposed updated wage index values the labor-related share, and the best available claims and CCR data. Furthermore, as discussed in section V.A.2. of the Addendum to the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24079), consistent with our historical policy, we have proposed to update the standard Federal rate for RY 2009 by 0.6 percent in order to calculate the proposed RY 2010 standard Federal rate at $39,349.05.

Moreover, in the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24079), we proposed a HCO threshold of $16,059. As discussed in detail in section II.B. of this supplemental proposed rule, this HCO threshold was calculated based in part on the proposed RY 2010 MS–LTC–DRG relative weights presented in Table 11 of that same proposed rule. Because the estimated payment for most LTCH PPS cases, including any applicable HCO payment, is based in-part on the relative weight of the MS–LTC–DRG, the revision to the proposed RY 2010 MS–LTC–DRG relative weights also affects the proposed HCO threshold for RY 2010. Therefore, in this supplemental proposed rule, we are proposing a HCO fixed-loss amount for RY 2010 of $18,868, based on the proposed RY 2010 MS–LTC–DRG relative weights presented in this supplemental proposed rule, that would maintain that total estimated HCO payments are projected to equal 8 percent of total estimated payments under the LTCH PPS in RY 2010. Currently, our database of 399 LTCHs includes the data for 81 nonprofit (voluntary ownership control)

LTCHs and 267 proprietary LTCHs. Of the remaining 51 LTCHs, 12 LTCHs are government-owned and operated and the ownership type of the other 39 LTCHs is unknown. Based on the best available data for the 399 LTCHs in our database used in the impact analysis for this supplemental proposed rule, we estimate that the proposed update to the standard Federal rate for RY 2010 and the proposed changes to the area wage adjustment for the 2010 LTCH PPS rate year would result in an increase in estimated payments from the 2009 LTCH PPS rate year of approximately $101 million (or about 2.2 percent). That is, based on the 399 LTCHs in our database, we estimate RY 2009 LTCH PPS payments based on the FY 2009 MS–LTC–DRG relative weights issued in an interim final rule with comment period published elsewhere in this **Federal Register** to be approximately $4.634 billion and RY 2010 LTCH PPS payments to be approximately $4.735 billion. We note that the impact analysis in this supplemental proposed rule replaces the impact analysis presented in the proposed rule published on May 22, 2009 in which we estimated RY 2009 LTCH PPS payments to be approximately $4.76 billion and RY 2010 LTCH PPS payments to be approximately $4.90 billion, resulting in a projected increase in estimated payments from RY 2009 to RY 2010 of approximately 2.8 percent. Because the combined distributional effects and estimated changes to the Medicare program payments would be greater than $100 million, this proposed rule is considered a major economic rule, as defined in this section.

As Table I shows, the proposed change in the standard Federal rate is projected to result in an increase of 0.5 percent in estimated payments per discharge from RY 2009 to RY 2010, on average, for all LTCHs. As discussed in the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24079), payments for cost-based SSO cases and a portion of payments for SSO cases that are paid based on the ''blend'' option (that is, SSO cases paid under § 412.529(c)(2)(iv)) are not affected by the proposed update to the standard Federal rate. Accordingly, we estimate that the effect of the proposed 0.6 percent update to the standard Federal rate would result in a 0.5 percent increase (as shown in Column 6 of Table I) on estimated aggregate LTCH PPS payments for all LTCH PPS cases, including SSO cases.

While the effect of the proposed change to the standard Federal rate is projected to increase estimated payments from RY 2009 to RY 2010, the proposed changes to the area wage adjustment from RY 2009 to RY 2010 are expected to result in neither an increase nor a decrease in estimated aggregate LTCH PPS payments from RY 2009 to RY 2010 (Column 7 of Table I).

We note that the overall percent change in estimated LTCH payments from RY 2009 to RY 2010 for all proposed changes (shown in Column 8) cannot be determined by adding the incremental effect of the proposed standard Federal rate (Column 6) and the proposed area wage adjustment changes (Column 7) on estimated aggregate LTCH PPS payments. Each of those two columns are intended to show the isolated impact of the respective change (that is, the proposed change to the standard Federal rate or the proposed change to the area wage adjustment) on estimated payments for RY 2010 as compared to RY 2009. Since, the interactive effects resulting from both the proposed change to the standard Federal rate and the proposed change to the area wage adjustment, as well as estimated changes to HCO and SSO payments, are not reflected in each of these columns the overall percent change in estimated LTCH payments from RY 2009 to RY 2010 for all proposed changes cannot be determined by simply adding Column 6 and Column 7. However, the interactive effects of all proposed changes, including the change in estimated HCO and SSO payments, are reflected in the estimated change in payments for all proposed changes for RY 2010 as compared to RY 2009 (shown in Column 8 of Table I).

Notwithstanding this limitation in comparing the various columns in Table I, the projected increase in payments per discharge from RY 2009 to RY 2010 is 2.2 percent (shown in Column 8). This projected increase in payments is attributable to the proposed impacts of the proposed change to the standard Federal rate (0.5 percent in Column 6), and the proposed change due to the area wage adjustment (0 percent in Column 7), and the effect of the estimated increase in payments for HCO and SSO cases in RY 2010 as compared to RY 2009, as well as interactive effects, as discussed previously. Specifically, estimated total HCO payments are projected to increase from RY 2009 to RY 2010 in order to ensure that estimated HCO payments will be 8 percent of total estimated LTCH PPS payments in RY 2010. As discussed in detail in the IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24079), an analysis of the most recent available LTCH PPS claims data (that is, FY 2008 claims from the December 2008 update of the MedPAR files) indicates that the RY 2009 HCO threshold of $22,960 may result in HCO payments in RY 2009 that fall below the estimated 8 percent. Specifically, we currently estimate that HCO payments will be approximately 6.7 percent of estimated total LTCH PPS payments in RY 2009. Consequently, it is necessary to propose to decrease the HCO threshold for RY 2010 in order to ensure that estimated HCO payments will be 8 percent of total estimated LTCH PPS payments in RY 2010. We estimate that the impact of the increase in HCO payments would result in approximately a 1.3 percent increase in estimated payments from RY 2009 to RY 2010. Furthermore, in calculating the estimated increase in payments from RY 2009 to RY 2010 for HCO and SSO cases, we increased estimated costs by the applicable market basket percentage increase as projected by our actuaries. We note that estimated payments for SSO cases comprise approximately 15 percent of estimated total LTCH PPS payments, and estimated payments for HCO cases comprise approximately 8 percent of estimated total LTCH PPS payments. Payments for HCO cases are based on 80 percent of the estimated cost above the HCO threshold, and the majority of the payments for SSO cases (over 70 percent) are based on the estimated cost of the SSO case. Accordingly, we estimate that of the 2.2 percent increase in payments per discharge from RY 2009 to RY 2010, 1.3 percent is attributable to the projected increase in HCO payments and 0.4 percent is attributable to the projected increase in costs of SSO cases and the interactive effects which we have discussed previously.

The results of this impact analysis are summarized in Table I. As we discuss in detail throughout this regulatory impact analysis, based on the most recent available data, we believe that the proposed provisions of this supplemental proposed rule and the proposed provisions relating to the LTCH PPS contained in the FY 2010 IPPS and RY 2010 proposed rule (that is, the proposed update to the standard Federal rate and the proposed changes to the area wage adjustment) would result in an increase in estimated aggregate LTCH PPS payments and that the resulting LTCH PPS payment amounts result in appropriate Medicare payments.

C. Impact on Rural Hospitals

For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. As shown in Table

I, we are projecting a 3.1 percent increase in estimated payments per discharge for the 2010 LTCH PPS rate year as compared to the 2009 LTCH PPS rate year for rural LTCHs that would result from the proposed changes presented in this supplemental proposed rule and the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24079) (that is, the update to the standard Federal rate and the proposed changes to the area wage adjustment). This estimated impact is based on the data of the 26 rural LTCHs in our database of 399 LTCHs for which complete data were available.

The estimated increase in LTCH PPS payments from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year for rural LTCHs is due to the proposed change to the standard Federal rate, and the proposed change in the area wage adjustments, as well as the estimated change in HCO payments. That is, estimated HCO payments in RY 2009 are currently projected to be less than 8 percent of total estimated LTCH PPS payments. We believe that the proposed changes to the area wage adjustments presented in the FY 2010 IPPS and RY 2010 LTCH PPS 2010 proposed rule (74 FR 24079) (that is, the proposed use of updated wage data and the proposed change in the labor-related share) would result in accurate and appropriate LTCH PPS payments in RY 2010 because they are based on the most recent available data. Such updated data appropriately reflect national differences in area wage levels and appropriately identify the portion of the standard Federal rate that should be adjusted to account for such differences in area wages, thereby resulting in accurate and appropriate LTCH PPS payments.

D. Anticipated Effects

We discuss the impact of the proposed changes to the payment rates, factors, and other payment rate policies under the LTCH PPS for RY 2010 (in terms of their estimated fiscal impact on the Medicare budget and on LTCHs) in this supplemental proposed rule. We note that this impact analysis replaces the analysis included in the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24079).

1. Budgetary Impact

As discussed in this section of the supplemental proposed rule, we project an increase in aggregate RY 2010 LTCH PPS payments of approximately $101 million (or 2.2 percent) based on the 399 LTCHs in our database.

2. Impact on Providers

The basic methodology for determining a per discharge LTCH PPS payment is set forth in § 412.515 through § 412.536. In addition to the basic MS–LTC–DRG payment (standard Federal rate multiplied by the MS–LTC–DRG relative weight), we make adjustments for differences in area wage levels, COLA for Alaska and Hawaii, and SSOs. Furthermore, LTCHs may also receive HCO payments for those cases that qualify based on the threshold established each rate year.

To understand the impact of the proposed changes to the LTCH PPS payments presented in this supplemental proposed rule on different categories of LTCHs for the 2010 LTCH PPS rate year, it is necessary to estimate payments per discharge for the 2009 LTCH PPS rate year using the rates, factors and policies established in the RY 2009 LTCH PPS final rule (73 FR 26788 through 26874) including the FY 2009 GROUPER (Version 26.0), and FY 2009 MS–LTC–DRG relative weights, revised in the FY 2009 interim final rule with comment period published elsewhere in this **Federal Register**. Furthermore, we note that RY 2009 was a 15-month rate year due to the consolidation of the LTCH PPS updating cycles while RY 2010 is a 12-month rate year. In order to produce a meaningful comparison of the change in estimated payments from RY 2009 to RY 2010, for purposes of this impact analysis, we estimated payments for RY 2009 as if it was a 12-month rate year (that is, October 1, 2008 through September 30, 2009). To estimate the payments per discharge for RY 2010 the proposed LTCH PPS rates, factors, policies, and GROUPER for the 2010 LTCH PPS rate year (as discussed in section II. of the preamble and section V. of the Addendum to the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24079)) and the proposed MS–LTC–DRG relative weights and HCO fixed-loss amount (as discussed in section II. of this supplemental proposed rule). These estimates of both RY 2009 and RY 2010 LTCH PPS payments are based on the best available (FY 2008) LTCH claims data (that is, for both the RY 2009 and RY 2010 estimates we used only 12 months of claims data) and other factors such as the application of inflation factors to estimate costs for SSO and HCO cases in each year. We also evaluated the change in estimated 2009 LTCH PPS rate year payments to estimated 2010 LTCH PPS rate year payments (on a per discharge basis) for each category of LTCHs.

Hospital groups were based on characteristics provided in the OSCAR data, FY 2004 through FY 2006 cost report data in HCRIS, and Provider-Specific File data. Hospitals with incomplete characteristics were grouped into the ''unknown'' category. Hospital groups include the following:

- Location: Large urban/other urban/rural.
- Participation date.
- Ownership control.
- Census region.
- Bed size.

To estimate the impacts of the proposed payment rates and policy changes among the various categories of existing providers, we used LTCH cases from the FY 2008 MedPAR file to estimate payments for RY 2009 and to estimate payments for RY 2010 for 399 LTCHs. While currently there are just over 400 LTCHs, the most recent growth is predominantly in for-profit LTCHs that provide respiratory and ventilator-dependent patient care. We believe that the discharges based on the FY 2008 MedPAR data for the 399 LTCHs in our database, which includes 267 proprietary LTCHs, provide sufficient representation in the MS–LTC–DRGs containing discharges for patients who received LTCH care for the most commonly treated LTCH patients' diagnoses.

3. Calculation of Prospective Payments

For purposes of this impact analysis, to estimate per discharge payments under the LTCH PPS, we simulated payments on a case-by-case basis using LTCH claims from the FY 2008 MedPAR files. For modeling estimated LTCH PPS payments for RY 2009, we applied the RY 2009 standard Federal rate (that is, $39,114.36, which is effective for LTCH discharges occurring on or after July 1, 2008, and through September 30, 2009). For modeling estimated LTCH PPS payments for RY 2010, we applied the proposed RY 2010 standard Federal rate of $39,349.05, which would be effective for LTCH discharges occurring on or after October 1, 2009, and through September 30, 2010).

Furthermore, in modeling estimated LTCH PPS payments for both RY 2009 and RY 2010 in this impact analysis, we applied the RY 2009 and proposed RY 2010 adjustments for area wage differences and the COLA for Alaska and Hawaii. Specifically, we adjusted for area wage differences for estimated 2009 LTCH PPS rate year payments using the current LTCH PPS labor-related share of 75.662 percent (73 FR 26815), the wage index values established in the Tables 1 and 2 of the Addendum of the RY 2009 LTCH final

rule (73 FR 26840 through 26863) and the COLA factors established in Table III of the preamble of the RY 2009 LTCH final rule (73 FR 26819). Similarly, we adjusted for area wage differences for estimated proposed 2010 LTCH PPS rate year payments using the LTCH PPS proposed RY 2010 labor-related share of 75.904 percent (72 FR 24079), the proposed RY 2010 wage index values presented in the Tables 12A and 12B of the Addendum to the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24079), and the proposed RY 2010 COLA factors shown in the table in section V. of the Addendum to the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24079).

As discussed above, our impact analysis reflects an estimated change in payments for SSO cases. In modeling payments for SSO cases in RY 2009, we applied an inflation factor of 1.024 percent (determined by OACT) to the estimated costs of each case determined from the charges reported on the claims in the FY 2008 MedPAR files and the best available Cost-to-Charge Ratios (CCRs) from the December 2008 update of the Provider-Specific File. In modeling proposed payments for SSO cases in RY 2010, we applied an inflation factor of 1.049 (determined by OACT) to the estimated costs of each case determined from the charges reported on the claims in the FY 2008 MedPAR files and the best available CCRs from the December 2008 update of the Provider-Specific File.

These impacts reflect the estimated ''losses'' or ''gains'' among the various classifications of LTCHs from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year based on the proposed payment rates and policy changes presented in this supplemental proposed rule and the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24079). Table I illustrates the estimated aggregate impact of the LTCH PPS among various classifications of LTCHs.

- The first column, LTCH Classification, identifies the type of LTCH.
- The second column lists the number of LTCHs of each classification type.
- The third column identifies the number of LTCH cases.
- The fourth column shows the estimated payment per discharge for the 2009 LTCH PPS rate year (as described above).
- The fifth column shows the estimated payment per discharge for the 2010 LTCH PPS rate year (as described above).
- The sixth column shows the percentage change in estimated payments per discharge from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year for proposed changes to the standard Federal rate (as discussed in section V. of the Addendum to the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24079)).
- The seventh column shows the percentage change in estimated payments per discharge from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year for proposed changes to the area wage adjustment at § 412.525(c) (as discussed in section V.B.4. of the Addendum to the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24079)).
- The eighth column shows the percentage change in estimated payments per discharge from the 2009 LTCH PPS rate year (Column 4) to the 2010 LTCH PPS rate year (Column 5) for all proposed changes (and includes the effect of estimated changes to SSO payments).

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TABLE I: Impact of Proposed Payment Rate and Payment Rate Policy Changes to LTCH PPS Payments for RY 2010 (Estimated 2009 LTCH PPS Rate Year Payments Compared to Estimated Proposed 2010 LTCH PPS Rate Year Payments*)

LTCH Classification (1)	Number of LTCHs (2)	Number of LTCH PPS Cases (3)	Average RY 2009 LTCH PPS Rate Year Payment Per Case[1] (4)	Average Proposed RY 2010 LTCH PPS Rate Year Payment Per Case[2] (5)	Percent Change in Estimated Payments Per Discharge from RY 2009 to RY 2010 for Proposed Changes to the Federal Rate[3] (6)	Percent Change in Estimated Payments Per Discharge from RY 2009 to RY 2010 for Proposed Changes to the Area Wage Adjustment[4] (7)	Percent Change in Payments Per Discharge from RY 2009 to RY 2010 for All Proposed Changes[5] (8)
ALL PROVIDERS	399	132,383	$35,002	$35,765	0.5	0	2.2
BY LOCATION:							
RURAL	26	5,906	$30,424	$31,369	0.6	0.4	3.1
URBAN	373	126,477	$35,216	$35,970	0.5	-0.1	2.1
LARGE	192	76,045	$36,615	$37,440	0.5	0.1	2.3
OTHER	181	50,432	$33,107	$33,755	0.5	-0.3	2.0
BY PARTICIPATION DATE:							
BEFORE OCT. 1983	17	6,762	$30,940	$31,887	0.5	0.6	3.1
OCT. 1983 - SEPT. 1993	44	18,751	$35,383	$36,333	0.5	0.2	2.7
OCT. 1993 - SEPT. 2002	191	66,982	$34,615	$35,306	0.5	-0.1	2.0
AFTER OCTOBER 2002	136	37,643	$35,923	$36,658	0.5	-0.3	2.0
UNKNOWN PARTICIPATION DATE	11	2,245	$40,191	$41,427	0.5	0.7	3.1
BY OWNERSHIP TYPE:							
VOLUNTARY	81	21,914	$35,613	$36,495	0.5	-0.2	2.5
PROPRIETARY	267	100,286	$34,592	$35,285	0.5	0	2.0
GOVERNMENT	12	1,961	$39,728	$40,843	0.5	-0.3	2.8
UNKNOWN OWNERSHIP TYPE	39	8,147	$37,279	$38,495	0.6	0.2	3.3
BY REGION:							
NEW ENGLAND	15	8,102	$30,283	$31,278	0.5	0.8	3.3
MIDDLE ATLANTIC	29	8,368	$36,310	$36,747	0.5	-0.5	1.2
SOUTH ATLANTIC	49	13,592	$39,537	$40,404	0.5	-0.4	2.2
EAST NORTH CENTRAL	66	19,721	$38,816	$39,305	0.5	-0.7	1.3
EAST SOUTH CENTRAL	31	8,385	$35,466	$36,294	0.5	-0.1	2.3
WEST NORTH CENTRAL	21	5,234	$36,627	$37,425	0.5	0.2	2.2

LTCH Classification (1)	Number of LTCHs (2)	Number of LTCH PPS Cases (3)	Average RY 2009 LTCH PPS Rate Year Payment Per Case[1] (4)	Average Proposed RY 2010 LTCH PPS Rate Year Payment Per Case[2] (5)	Percent Change in Estimated Payments Per Discharge from RY 2009 to RY 2010 for Proposed Changes to the Federal Rate[3] (6)	Percent Change in Estimated Payments Per Discharge from RY 2009 to RY 2010 for Proposed Changes to the Area Wage Adjustment[4] (7)	Percent Change in Payments Per Discharge from RY 2009 to RY 2010 for All Proposed Changes[5] (8)
WEST SOUTH CENTRAL	138	50,716	$30,438	$31,062	0.5	-0.2	2.1
MOUNTAIN	25	6,217	$37,634	$38,899	0.5	0.8	3.4
PACIFIC	25	11,973	$42,713	$44,139	0.5	1.3	3.3
BY BED SIZE:							
BEDS: 0-24	42	6,439	$31,948	$32,851	0.6	0	2.8
BEDS: 25-49	191	44,236	$35,388	$36,036	0.5	-0.3	1.8
BEDS: 50-74	82	28,272	$35,014	$35,810	0.5	0	2.3
BEDS: 75-124	48	24,272	$37,078	$37,930	0.5	0.1	2.3
BEDS: 125-199	23	16,799	$33,448	$34,207	0.5	0	2.3
BEDS: 200 +	13	12,365	$33,227	$34,077	0.5	0.4	2.6

[1] Estimated 2009 LTCH PPS rate year payments based on the rates, factors and policies established in the RY 2009 LTCH PPS final rule (73 FR 26788) the FY 2009 GROUPER Version 26.0 (73 FR 26788) and revised FY 2009 relative weights established in the FY 2009 interim final rule with comment period published elsewhere in this **Federal Register**.

[2] Estimated 2010 LTCH PPS rate year payments based on the revised proposed RY 2010 relative weights and revised proposed RY 2010 HCO threshold presented in this supplemental proposed rule the proposed payment rates and proposed policy changes presented in the preamble and the Addendum of the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24079).

[3] Percent change in estimated payments per discharge from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year for the proposed changes to the standard Federal rate, as discussed in section V.A. of the Addendum to the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule.

[4] Percent change in estimated payments per discharge from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year for proposed changes to the area wage adjustment at §412.525(c) (as discussed in section V.B.4. of the Addendum to the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule).

[5] Percent change in estimated payments per discharge from the 2009 LTCH PPS rate year (shown in Column 4) to the 2010 LTCH PPS rate year (shown in Column 5), including all of the proposed changes presented in the preamble of this supplemental proposed rule. Note, this column, which shows the percent change in estimated payments per discharge for all proposed changes, does not equal the sum of the percent changes in estimated payments per discharge for proposed changes to the standard Federal rate (column 6) and the proposed changes to the area wage adjustment (Column 7) due to the effect of estimated changes in proposed payments to SSO cases that are paid based on estimated costs (as discussed in this impact analysis), as well as other interactive effects that cannot be isolated.

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4. Results

Based on the most recent available data (as described previously for 399 LTCHs), we have prepared the following summary of the impact (as shown in Table I) of the proposed LTCH PPS payment rate and policy changes presented in this supplemental proposed rule and those presented in the FY 2010 IPPS and RY 2010 LTCH proposed rule for the 2010 LTCH rate year. The impact analysis in Table I shows that estimated payments per discharge are expected to increase approximately 2.2 percent, on average, for all LTCHs from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year as a result of the proposed payment rate and policy changes presented in FY 2010 IPPS and RY 2010 proposed rule and the proposed MS–LTC–DRG relative weights and HCO fixed-loss amount presented in this supplemental proposed rule, as well as estimated increases in HCO and SSO payments. We note that we are proposing a 0.6 percent increase to the standard Federal rate for RY 2010, based on the latest market basket estimate (2.4 percent) and the proposed documentation and coding adjustment (−1.8 percent). We noted earlier in this section that for most categories of LTCHs, as shown in Table I (Column 6), the impact of the proposed increase of 0.6 percent to the standard Federal rate is projected to result in a 0.5 percent increase in estimated payments per discharge from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year. In addition to the proposed 0.6 percent increase to the standard Federal rate for RY 2010, the projected percent increase in estimated payments per discharge from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year of 2.2 percent shown in Table I (Column 8) reflects the effect of estimated increases in HCO and SSO payments, as discussed previously. Furthermore, as discussed previously in this regulatory impact analysis, the average increase in estimated payments per discharge from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year for all LTCHs of approximately 2.2 percent (as shown in Table I) was determined by comparing estimated proposed RY 2010 LTCH PPS payments (using the proposed rates and policies discussed in the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule and those discussed in this supplemental proposed rule) to estimated RY 2009 LTCH PPS payments.

a. Location

Based on the most recent available data, the majority of LTCHs are in urban areas. Approximately 7 percent of the LTCHs are identified as being located in a rural area, and approximately 5 percent of all LTCH cases are treated in these rural hospitals. The impact analysis presented in Table I shows that the average percent increase in estimated payments per discharge from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year for all hospitals is 2.2 percent for all proposed changes. For rural LTCHs, the percent change for all proposed changes is estimated to be 3.1 percent, while for urban LTCHs, we estimate this increase to be nearly average, that is 2.1 percent. Large urban LTCHs are projected to experience a near to average increase (2.3 percent) in estimated payments per discharge from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year, while other urban LTCHs are projected to experience a slightly lower than average increase (2.0 percent) in estimated payments per discharge from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year, as shown in Table I.

b. Participation Date

LTCHs are grouped by participation date into four categories: (1) Before October 1983; (2) between October 1983 and September 1993; (3) between October 1993 and September 2002; and (4) after October 2002. Based on the most recent available data, the majority (approximately 51 percent) of the LTCH cases are in hospitals that began participating between October 1993 and September 2002, and are projected to experience a near average increase (2.0 percent) in estimated payments per discharge from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year, as shown in Table I.

In the two participation categories where LTCHs began participating in Medicare before September 1993, LTCHs are projected to experience higher than average percent increases (3.1 percent and 2.7 percent, respectively) in estimated payments per discharge from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year, as shown in Table I, due to proposed changes in the wage index and an estimated increase in HCO and SSO payments. Approximately 4 percent of LTCHs began participating in Medicare before October 1983. The LTCHs in this category are projected to experience a higher than average increase in estimated payments because 65 percent of these LTCHs are located in areas where the proposed RY 2010 wage index value is greater than the RY 2009 wage index value, and also because the majority of these LTCHs have a proposed wage index value greater than 1.0. Approximately 11 percent of LTCHs began participating in Medicare between October 1983 and September 1993. These LTCHs are projected to experience a higher than average increase in estimated payments because the majority (57 percent) are located in areas where the proposed RY 2010 wage index value would be greater than the RY 2009 wage index value. The majority of LTCHs, that is, those that began participating in Medicare since October 1993, are projected to experience near average increases in estimated payments per discharge from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year, as shown in Table I.

c. Ownership Control

Other than LTCHs whose ownership control type is unknown, LTCHs are grouped into three categories based on ownership control type: Voluntary, proprietary, and government. Based on the most recent available data, approximately 20 percent of LTCHs are identified as voluntary (Table I). We expect that, for these LTCHs in the voluntary category, estimated 2010 LTCH PPS rate year payments per discharge would increase higher than average (2.5 percent) in comparison to estimated payments in the 2009 LTCH PPS rate year, as shown in Table I, primarily because the change in estimated HCO payments is projected to be higher than average for these LTCHs. The majority (67 percent) of LTCHs are identified as proprietary and these LTCHs are projected to experience a near average (2.0 percent) increase in estimated payments per discharge from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year. Finally, government owned and operated LTCHs (3.0 percent) are expected to experience a higher than the average increase (2.8 percent) in estimated payments primarily due to a larger than average increase in estimated HCO payments.

d. Census Region

Of the 9 census regions, we project that the increase in estimated payments per discharge would have the largest impact on LTCHs in the New England, Mountain, and Pacific regions (3.3 percent, 3.4 percent, 3.3 percent, respectively, as shown in Table I). As explained in greater detail above, the estimated percent increase in payments per discharge from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year for most regions is attributable to the projected increase in estimated HCO and SSO payments, the proposed increase in the standard Federal rate and the proposed changes to the area wage adjustment. Specifically, for the

New England region, all the LTCHs located in this region have a proposed wage index value greater than 1.0; and the majority (87 percent) of these LTCHs are located in areas where the proposed RY 2010 wage index value is greater than the RY 2009 wage index value. The projected increase in estimated payments per discharge from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year for LTCHs in the Mountain and Pacific regions is also due to the projected increase in estimated HCO and SSO payments and the significantly higher than average estimated impact from the proposed changes to the area wage adjustment. That is, the majority (60 percent) of the LTCHs located in the Mountain region have a proposed wage index value greater than 1.0, and in addition, most of these LTCHs are located in areas where the proposed RY 2010 wage index value is greater than the RY 2009 wage index value. Furthermore, all the LTCHs located in the Pacific region have a proposed wage index value greater than 1.0 and are located in areas where the proposed RY 2010 wage index value would be greater than the RY 2009 wage index value.

In contrast, LTCHs located in the Middle Atlantic and East North Central regions are projected to experience a lower than average increase in estimated payments per discharge from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year. The projected increase in payments of 1.2 percent for LTCHs in the Middle Atlantic region is primarily due to the 59 percent of LTCHs in this region that are located in areas where the proposed RY 2010 wage index value would be less than the RY 2009 wage index value. Similarly, the lower than average increase (1.3 percent) in payments per discharge for LTCHs in the East North Central region is largely due to the majority of LTCHs in this region that are expected to experience a decrease in estimated payments per discharge due to the proposed changes in the area wage adjustment. The remaining regions, South Atlantic, East South Central, West North Central, and West South Central, are expected to experience near the national average increase in estimated payments per discharge from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year.

e. Bed Size

LTCHs were grouped into six categories based on bed size: 0–24 beds; 25–49 beds; 50–74 beds; 75–124 beds; 125–199 beds; and greater than 200 beds.

We are projecting an increase in estimated 2010 LTCH PPS rate year payments per discharge in comparison to the 2009 LTCH PPS rate year for all bed size categories. Approximately 38 percent of LTCHs are in bed size categories where estimated 2010 LTCH PPS rate year payments per discharge are projected to increase near the average increase for all LTCHs in comparison to estimated 2009 LTCH PPS rate year payments per discharge. That is, LTCHs in bed size categories of 50–74 beds, 75–124 beds, and 125–199 beds are projected to experience an overall increase of 2.3 percent. LTCHs in the bed size category of 0–24 beds are projected to experience a higher than average increase (2.8 percent) in estimated payments per discharge from the 2009 LTCH PPS rate year to the 2010 LTCH PPS rate year due primarily to their estimated increase in HCO payments. For LTCHs with 200+ beds, the higher than average projected increase in estimated payments of 2.6 percent is due to the projected increase in estimated HCO and SSO payments and the significantly higher than average impact from the proposed changes to the area wage adjustment. Specifically, 69 percent of LTCHs in this category are expected to have a proposed RY 2010 wage index value greater than 1.0, and 62 percent of the LTCHs in this category are located in areas where the proposed RY 2010 wage index value is greater than the RY 2009 wage index value. We are projecting a lower than the average increase in estimated 2010 LTCH PPS rate year payments per discharge in comparison to the 2009 LTCH PPS rate year for LTCHs in bed size category 25–49 beds, which is largely due to the 87 percent of LTCHs in this category expected to have a proposed RY 2010 wage index value of less than 1.0. In addition, 54 percent of the LTCHs in this category are located in areas where the proposed RY 2010 wage index value is less than the RY 2009 wage index value.

E. Effect on the Medicare Program

As noted previously, we project that the provisions of the FY 2010 IPPS and RY 2010 proposed rule relating to the LTCH PPS and the provisions of this supplemental proposed rule would result in an increase in estimated aggregate LTCH PPS payments in RY 2010 of approximately $101 million (or about 2.2 percent) for the 399 LTCHs in our database.

F. Effect on Medicare Beneficiaries

Under the LTCH PPS, hospitals receive payment based on the average resources consumed by patients for each diagnosis. We do not expect any changes in the quality of care or access to services for Medicare beneficiaries under the LTCH PPS, but we expect that paying prospectively for LTCH services would enhance the efficiency of the Medicare program.

G. Alternatives Considered

The preamble of this supplemental proposed rule provides descriptions of the statutory provisions that are addressed, identifies implementing policies where discretion has been exercised, and presents rationales for our decisions and, where relevant, alternatives that were considered.

H. Overall Conclusion

Overall, LTCHs are projected to experience an increase in estimated payments per discharge in RY 2010. In the impact analysis, we are using the proposed rates, factors, and policies presented in this supplemental proposed rule and those in the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule, including proposed MS–DRG relative weights, updated proposed wage index values, and the best available claims and CCR data to estimate the change in payments for the 2010 LTCH PPS rate year. Accordingly, based on the best available data for the 399 LTCHs in our database, we estimate that RY 2010 LTCH PPS payments will increase approximately $101 million (or about 2.2 percent).

I. Accounting Statement

As discussed previously, the impact analysis for the proposed changes to the LTCH PPS presented in the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule and those presented in this proposed rule projects an increase in estimated aggregate payments of approximately $101 million (or about 2.2 percent) for the 399 LTCHs in our database that are subject to payment under the LTCH PPS. Therefore, as required by OMB Circular A 4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table II we have prepared an accounting statement showing the classification of the expenditures associated with these provisions as they relate to proposed changes to the LTCH PPS. Table II provides our best estimate of the proposed increase in Medicare payments under the LTCH PPS as a result of the proposed provisions presented in FY 2010 IPPS and RY 2010 LTCH PPS proposed rule and those presented in this supplemental proposed rule based on the data for the 399 LTCHs in our database. All expenditures are classified as transfers to Medicare providers (that is, LTCHs).

TABLE II: Accounting Statement: Classification of Estimated Expenditures, from the 2009 LTCH PPS Rate Year to the 2010 LTCH PPS Rate Year

Category	Transfers
Annualized Monetized Transfers	Positive transfer - Estimated increase in expenditures: $101 million
From Whom To Whom	Federal Government to LTCH Medicare Providers

Authority: (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 21, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: May 27, 2009.

Kathleen Sebelius,

Secretary.

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TABLE 11(Amended).—PROPOSED MS-LTC-DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, AND SHORT-STAY OUTLIER (SSO) THRESHOLD FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010 UNDER THE LTCH PPS

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
1	1	Heart transplant or implant of heart assist system w MCC	0	0.0000	0.0	0.0
2	1	Heart transplant or implant of heart assist system w/o MCC	0	0.0000	0.0	0.0
3	3	ECMO or trach w MV 96+ hrs or PDX exc face, mouth & neck w maj O.R.	281	4.4673	64.3	53.6
4	4	Trach w MV 96+ hrs or PDX exc face, mouth & neck w/o maj O.R.	1,385	3.1117	45.3	37.8
5	5	Liver transplant w MCC or intestinal transplant	0	0.0000	0.0	0.0
6	5	Liver transplant w/o MCC	0	0.0000	0.0	0.0
7	7	Lung transplant	0	0.0000	0.0	0.0
8	8	Simultaneous pancreas/kidney transplant	0	0.0000	0.0	0.0
9	9	Bone marrow transplant	0	1.6485	37.2	31.0
10	10	Pancreas transplant	0	0.0000	0.0	0.0
11	11	Tracheostomy for face,mouth & neck diagnoses w MCC*	2	1.6485	37.2	31.0
12	11	Tracheostomy for face,mouth & neck diagnoses w CC*	0	1.1740	24.3	20.3
13	11	Tracheostomy for face,mouth & neck diagnoses w/o CC/MCC*	0	1.1740	24.3	20.3
20	20	Intracranial vascular procedures w PDX hemorrhage w MCC	0	1.6485	37.2	31.0
21	20	Intracranial vascular procedures w PDX hemorrhage w CC	0	0.6453	21.6	18.0
22	20	Intracranial vascular procedures w PDX hemorrhage w/o CC/MCC	0	0.6453	21.6	18.0
23	23	Craniotomy w major device implant or acute complex CNS PDX w MCC*	1	0.7541	23.8	19.8
24	23	Craniotomy w major device implant or acute complex CNS PDX w/o MCC*	0	0.7541	23.8	19.8
25	25	Craniotomy & endovascular intracranial procedures w MCC*	3	1.6485	37.2	31.0
26	25	Craniotomy & endovascular intracranial procedures w CC*	1	0.4806	19.3	16.1
27	25	Craniotomy & endovascular intracranial procedures w/o CC/MCC*	0	0.4806	19.3	16.1
28	28	Spinal procedures w MCC	15	1.0755	27.0	22.5
29	28	Spinal procedures w CC	12	0.7541	23.8	19.8
30	28	Spinal procedures w/o CC/MCC	1	0.7541	23.8	19.8

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
31	31	Ventricular shunt procedures w MCC	4	1.6485	37.2	31.0
32	31	Ventricular shunt procedures w CC	2	0.6453	21.6	18.0
33	31	Ventricular shunt procedures w/o CC/MCC	1	0.6453	21.6	18.0
34	34	Carotid artery stent procedure w MCC	0	1.6485	37.2	31.0
35	34	Carotid artery stent procedurew CC	0	1.6485	37.2	31.0
36	34	Carotid artery stent procedure w/o CC/MCC	0	1.6485	37.2	31.0
37	37	Extracranial procedures w MCC	18	1.6485	37.2	31.0
38	37	Extracranial procedures w CC	4	1.6485	37.2	31.0
39	37	Extracranial procedures w/o CC/MCC	0	1.6485	37.2	31.0
40	40	Periph & cranial nerve & other nerv syst proc w MCC	122	1.4166	35.3	29.4
41	40	Periph & cranial nerve & other nerv syst proc w CC	90	0.9456	29.9	24.9
42	40	Periph & cranial nerve & other nerv syst proc w/o CC/MCC	5	0.6453	21.6	18.0
52	52	Spinal disorders & injuries w CC/MCC	86	1.0011	33.6	28.0
53	52	Spinal disorders & injuries w/o CC/MCC	8	0.4806	19.3	16.1
54	54	Nervous system neoplasms w MCC	39	0.9077	22.6	18.8
55	54	Nervous system neoplasms w/o MCC	38	0.6058	22.6	18.8
56	56	Degenerative nervous system disorders w MCC	1,141	0.7924	25.8	21.5
57	56	Degenerative nervous system disorders w/o MCC	1,435	0.5898	24.0	20.0
58	58	Multiple sclerosis & cerebellar ataxia w MCC	14	0.7541	23.8	19.8
59	58	Multiple sclerosis & cerebellar ataxia w CC	31	0.5861	21.5	17.9
60	58	Multiple sclerosis & cerebellar ataxia w/o CC/MCC	4	0.4806	19.3	16.1
61	61	Acute ischemic stroke w use of thrombolytic agent w MCC	0	0.8288	24.7	20.6
62	61	Acute ischemic stroke w use of thrombolytic agent w CC	0	0.6630	24.1	20.1
63	61	Acute ischemic stroke w use of thrombolytic agent w/o CC/MCC	0	0.4806	19.3	16.1
64	64	Intracranial hemorrhage or cerebral infarction w MCC	152	0.8814	24.6	20.5
65	64	Intracranial hemorrhage or cerebral infarction w CC	60	0.5560	23.7	19.8
66	64	Intracranial hemorrhage or cerebral infarction w/o CC/MCC	8	0.4806	19.3	16.1
67	67	Nonspecific cva & precerebral occlusion w/o infarct w MCC	3	0.6453	21.6	18.0
68	67	Nonspecific cva & precerebral occlusion w/o infarct w/o MCC	2	0.4806	19.3	16.1
69	69	Transient ischemia	6	0.4806	19.3	16.1
70	70	Nonspecific cerebrovascular disorders w MCC	141	0.8288	24.7	20.6
71	70	Nonspecific cerebrovascular disorders w CC	74	0.6630	24.1	20.1
72	70	Nonspecific cerebrovascular disorders w/o CC/MCC	9	0.4806	19.3	16.1
73	73	Cranial & peripheral nerve disorders w MCC	104	0.9597	26.8	22.3
74	73	Cranial & peripheral nerve disorders w/o MCC	128	0.5849	23.5	19.6
75	75	Viral meningitis w CC/MCC	19	0.7541	23.8	19.8

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
76	75	Viral meningitis w/o CC/MCC	0	0.7541	23.8	19.8
77	77	Hypertensive encephalopathy w MCC	2	1.0755	27.0	22.5
78	77	Hypertensive encephalopathy w CC	1	0.4806	19.3	16.1
79	77	Hypertensive encephalopathy w/o CC/MCC	0	0.4546	18.9	15.8
80	80	Nontraumatic stupor & coma w MCC	23	0.6453	21.6	18.0
81	80	Nontraumatic stupor & coma w/o MCC	11	0.4806	19.3	16.1
82	82	Traumatic stupor & coma, coma >1 hr w MCC	11	1.0755	27.0	22.5
83	82	Traumatic stupor & coma, coma >1 hr w CC	8	0.7541	23.8	19.8
84	82	Traumatic stupor & coma, coma >1 hr w/o CC/MCC	2	0.7541	23.8	19.8
85	85	Traumatic stupor & coma, coma <1 hr w MCC	99	0.8426	24.4	20.3
86	85	Traumatic stupor & coma, coma <1 hr w CC	80	0.6280	23.8	19.8
87	85	Traumatic stupor & coma, coma <1 hr w/o CC/MCC	18	0.6280	23.8	19.8
88	88	Concussion w MCC	2	0.6453	21.6	18.0
89	88	Concussion w CC	2	0.4806	19.3	16.1
90	88	Concussion w/o CC/MCC	1	0.4806	19.3	16.1
91	91	Other disorders of nervous system w MCC	229	0.8440	23.7	19.8
92	91	Other disorders of nervous system w CC	104	0.6421	22.6	18.8
93	91	Other disorders of nervous system w/o CC/MCC	12	0.4806	19.3	16.1
94	94	Bacterial & tuberculous infections of nervous system w MCC	258	1.0233	28.0	23.3
95	94	Bacterial & tuberculous infections of nervous system w CC	99	0.8026	26.9	22.4
96	94	Bacterial & tuberculous infections of nervous system w/o CC/MCC	16	0.6453	21.6	18.0
97	97	Non-bacterial infect of nervous sys exc viral meningitis w MCC	51	0.8959	22.1	18.4
98	97	Non-bacterial infect of nervous sys exc viral meningitis w CC	28	0.7558	22.0	18.3
99	97	Non-bacterial infect of nervous sys exc viral meningitis w/o CC/MCC	3	0.7541	23.8	19.8
100	100	Seizures w MCC	52	0.8766	24.9	20.8
101	100	Seizures w/o MCC	26	0.5898	23.3	19.4
102	102	Headaches w MCC	5	0.6453	21.6	18.0
103	102	Headaches w/o MCC	4	0.4806	19.3	16.1
113	113	Orbital procedures w CC/MCC	0	1.1740	24.3	20.3
114	113	Orbital procedures w/o CC/MCC	0	1.0348	26.4	22.0
115	115	Extraocular procedures except orbit	1	0.4806	19.3	16.1
116	116	Intraocular procedures w CC/MCC	0	0.6453	21.6	18.0
117	116	Intraocular procedures w/o CC/MCC	0	0.6453	21.6	18.0
121	121	Acute major eye infections w CC/MCC	5	0.7541	23.8	19.8
122	121	Acute major eye infections w/o CC/MCC	0	0.6453	21.6	18.0
123	123	Neurological eye disorders	0	0.6453	21.6	18.0
124	124	Other disorders of the eye w MCC	4	0.7541	23.8	19.8
125	124	Other disorders of the eye w/o MCC	12	0.6453	21.6	18.0

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
129	129	Major head & neck procedures w CC/MCC or major device	0	1.1740	24.3	20.3
130	129	Major head & neck procedures w/o CC/MCC	0	1.0348	26.4	22.0
131	131	Cranial/facial procedures w CC/MCC	1	1.0755	27.0	22.5
132	131	Cranial/facial procedures w/o CC/MCC	0	1.0755	27.0	22.5
133	133	Other ear, nose, mouth & throat O.R. procedures w CC/MCC	9	1.0755	27.0	22.5
134	133	Other ear, nose, mouth & throat O.R. procedures w/o CC/MCC	0	1.0755	27.0	22.5
135	135	Sinus & mastoid procedures w CC/MCC	3	1.6485	37.2	31.0
136	135	Sinus & mastoid procedures w/o CC/MCC	0	1.0755	27.0	22.5
137	137	Mouth procedures w CC/MCC	0	1.0755	27.0	22.5
138	137	Mouth procedures w/o CC/MCC	0	1.0755	27.0	22.5
139	139	Salivary gland procedures	1	0.4806	19.3	16.1
146	146	Ear, nose, mouth & throat malignancy w MCC	52	1.1740	24.3	20.3
147	146	Ear, nose, mouth & throat malignancy w CC	31	1.0348	26.4	22.0
148	146	Ear, nose, mouth & throat malignancy w/o CC/MCC	3	1.0348	26.4	22.0
149	149	Dysequilibrium	8	0.4806	19.3	16.1
150	150	Epistaxis w MCC	0	0.7305	21.3	17.8
151	150	Epistaxis w/o MCC	0	0.6323	20.5	17.1
152	152	Otitis media & URI w MCC	29	0.7305	21.3	17.8
153	152	Otitis media & URI w/o MCC	30	0.6323	20.5	17.1
154	154	Nasal trauma & deformity w MCC	53	0.9479	24.2	20.2
155	154	Nasal trauma & deformity w CC	36	0.6465	21.1	17.6
156	154	Nasal trauma & deformity w/o CC/MCC	9	0.6465	21.1	17.6
157	157	Dental & Oral Diseases w MCC	15	1.0755	27.0	22.5
158	157	Dental & Oral Diseases w CC	16	0.7541	23.8	19.8
159	157	Dental & Oral Diseases w/o CC/MCC	6	0.6453	21.6	18.0
163	163	Major chest procedures w MCC	31	2.4091	39.2	32.7
164	163	Major chest procedures w CC	6	1.6485	37.2	31.0
165	163	Major chest procedures w/o CC/MCC	0	1.0352	29.2	24.3
166	166	Other resp system O.R. procedures w MCC	1,515	2.4688	42.2	35.2
167	166	Other resp system O.R. procedures w CC	296	1.9235	38.5	32.1
168	166	Other resp system O.R. procedures w/o CC/MCC	8	1.6485	37.2	31.0
175	175	Pulmonary embolism w MCC	152	0.8029	23.8	19.8
176	175	Pulmonary embolism w/o MCC	113	0.5688	20.4	17.0
177	177	Respiratory infections & inflammations w MCC	3,568	0.8929	23.4	19.5
178	177	Respiratory infections & inflammations w CC	2,231	0.7269	21.7	18.1
179	177	Respiratory infections & inflammations w/o CC/MCC	226	0.5756	18.6	15.5
180	180	Respiratory neoplasms w MCC	133	0.7815	19.9	16.6
181	180	Respiratory neoplasms w CC	84	0.6191	18.8	15.7
182	180	Respiratory neoplasms w/o CC/MCC	10	0.6191	18.8	15.7
183	183	Major chest trauma w MCC*	3	0.6453	21.6	18.0
184	183	Major chest trauma w CC*	1	0.4806	19.3	16.1

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
185	183	Major chest trauma w/o CC/MCC*	0	0.4806	19.3	16.1
186	186	Pleural effusion w MCC	167	0.7928	21.7	18.1
187	186	Pleural effusion w CC	48	0.6627	20.9	17.4
188	186	Pleural effusion w/o CC/MCC	7	0.6627	20.9	17.4
189	189	Pulmonary edema & respiratory failure	7,708	0.9688	23.8	19.8
190	190	Chronic obstructive pulmonary disease w MCC	2,240	0.7247	20.3	16.9
191	190	Chronic obstructive pulmonary disease w CC	1,328	0.6113	18.9	15.8
192	190	Chronic obstructive pulmonary disease w/o CC/MCC	445	0.4800	16.4	13.7
193	193	Simple pneumonia & pleurisy w MCC	2,131	0.7650	21.2	17.7
194	193	Simple pneumonia & pleurisy w CC	1,793	0.5993	19.5	16.3
195	193	Simple pneumonia & pleurisy w/o CC/MCC	262	0.5121	17.0	14.2
196	196	Interstitial lung disease w MCC	105	0.7272	21.5	17.9
197	196	Interstitial lung disease w CC	70	0.5609	18.0	15.0
198	196	Interstitial lung disease w/o CC/MCC	12	0.4806	19.3	16.1
199	199	Pneumothorax w MCC	57	0.7832	20.7	17.3
200	199	Pneumothorax w CC	30	0.6088	18.7	15.6
201	199	Pneumothorax w/o CC/MCC	4	0.4806	19.3	16.1
202	202	Bronchitis & asthma w CC/MCC	128	0.6598	20.7	17.3
203	202	Bronchitis & asthma w/o CC/MCC	17	0.4806	19.3	16.1
204	204	Respiratory signs & symptoms	161	0.8294	23.1	19.3
205	205	Other respiratory system diagnoses w MCC	402	0.8588	22.6	18.8
206	205	Other respiratory system diagnoses w/o MCC	155	0.6720	20.6	17.2
207	207	Respiratory system diagnosis w ventilator support 96+ hours	14,524	2.0252	33.7	28.1
208	208	Respiratory system diagnosis w ventilator support <96 hours	1,657	1.1469	22.8	19.0
215	215	Other heart assist system implant	0	1.0352	29.2	24.3
216	216	Cardiac valve & oth maj cardiothoracic proc w card cath w MCC*	0	1.0755	27.0	22.5
217	216	Cardiac valve & oth maj cardiothoracic proc w card cath w CC*	0	1.0352	29.2	24.3
218	216	Cardiac valve & oth maj cardiothoracic proc w card cath w/o CC/MCC*	0	1.0352	29.2	24.3
219	219	Cardiac valve & oth maj cardiothoracic proc w/o card cath w MCC*	0	1.0755	27.0	22.5
220	219	Cardiac valve & oth maj cardiothoracic proc w/o card cath w CC*	0	1.0352	29.2	24.3
221	219	Cardiac valve & oth maj cardiothoracic proc w/o card cath w/o CC/MCC*	0	1.0352	29.2	24.3
222	222	Cardiac defib implant w cardiac cath w AMI/HF/shock w MCC	1	1.6485	37.2	31.0
223	222	Cardiac defib implant w cardiac cath w AMI/HF/shock w/o MCC	0	1.0755	27.0	22.5
224	224	Cardiac defib implant w cardiac cath w/o AMI/HF/shock w MCC	0	1.6485	37.2	31.0

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
225	224	Cardiac defib implant w cardiac cath w/o AMI/HF/shock w/o MCC	0	1.0755	27.0	22.5
226	226	Cardiac defibrillator implant w/o cardiac cath w MCC	12	1.6485	37.2	31.0
227	226	Cardiac defibrillator implant w/o cardiac cath w/o MCC	2	1.6485	37.2	31.0
228	228	Other cardiothoracic procedures w MCC	0	1.4233	31.2	26.0
229	228	Other cardiothoracic procedures w CC	0	1.0352	29.2	24.3
230	228	Other cardiothoracic procedures w/o CC/MCC	0	1.0352	29.2	24.3
231	231	Coronary bypass w PTCA w MCC	0	1.0755	27.0	22.5
232	231	Coronary bypass w PTCA w/o MCC	0	1.0352	29.2	24.3
233	233	Coronary bypass w cardiac cath w MCC	0	1.0755	27.0	22.5
234	233	Coronary bypass w cardiac cath w/o MCC	0	1.0352	29.2	24.3
235	235	Coronary bypass w/o cardiac cath w MCC	0	1.0755	27.0	22.5
236	235	Coronary bypass w/o cardiac cath w/o MCC	0	1.0352	29.2	24.3
237	237	Major cardiovascular procedures w MCC	2	1.0755	27.0	22.5
238	237	Major cardiovascular procedures w/o MCC	0	1.0352	29.2	24.3
239	239	Amputation for circ sys disorders exc upper limb & toe w MCC	139	1.5225	38.4	32.0
240	239	Amputation for circ sys disorders exc upper limb & toe w CC	61	1.1094	33.8	28.2
241	239	Amputation for circ sys disorders exc upper limb & toe w/o CC/MCC	3	0.7541	23.8	19.8
242	242	Permanent cardiac pacemaker implant w MCC	5	1.6485	37.2	31.0
243	242	Permanent cardiac pacemaker implant w CC	7	1.0755	27.0	22.5
244	242	Permanent cardiac pacemaker implant w/o CC/MCC	3	1.0755	27.0	22.5
245	245	AICD generator procedures	1	1.6485	37.2	31.0
246	246	Percutaneous cardiovascular proc w drug-eluting stent w MCC	0	1.4233	31.2	26.0
247	246	Percutaneous cardiovascular proc w drug-eluting stent w/o MCC	0	1.0352	29.2	24.3
248	248	Percutaneous cardiovasc proc w non-drug-eluting stent w MCC	0	1.4233	31.2	26.0
249	248	Percutaneous cardiovasc proc w non-drug-eluting stent w/o MCC	0	1.0352	29.2	24.3
250	250	Perc cardiovasc proc w/o coronary artery stent or AMI w MCC	4	1.6485	37.2	31.0
251	250	Perc cardiovasc proc w/o coronary artery stent or AMI w/o MCC	0	1.6485	37.2	31.0
252	252	Other vascular procedures w MCC	130	1.4233	31.2	26.0
253	252	Other vascular procedures w CC	58	1.0352	29.2	24.3
254	252	Other vascular procedures w/o CC/MCC	1	1.0352	29.2	24.3
255	255	Upper limb & toe amputation for circ system disorders w MCC	46	1.3192	34.8	29.0

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
256	255	Upper limb & toe amputation for circ system disorders w CC	28	0.8963	27.7	23.1
257	255	Upper limb & toe amputation for circ system disorders w/o CC/MCC	2	0.6453	21.6	18.0
258	258	Cardiac pacemaker device replacement w MCC	0	0.6453	21.6	18.0
259	258	Cardiac pacemaker device replacement w/o MCC	1	0.6453	21.6	18.0
260	260	Cardiac pacemaker revision except device replacement w MCC	7	1.6485	37.2	31.0
261	260	Cardiac pacemaker revision except device replacement w CC	0	0.6453	21.6	18.0
262	260	Cardiac pacemaker revision except device replacement w/o CC/MCC	0	0.6453	21.6	18.0
263	263	Vein ligation & stripping	0	0.4514	19.3	16.1
264	264	Other circulatory system O.R. procedures	539	1.0314	30.6	25.5
265	265	AICD lead procedures	0	0.6453	21.6	18.0
280	280	Circulatory disorders w AMI, discharged alive w MCC	265	0.7490	22.3	18.6
281	280	Circulatory disorders w AMI, discharged alive w CC	116	0.5626	20.1	16.8
282	280	Circulatory disorders w AMI, discharged alive w/o CC/MCC	25	0.5234	17.6	14.7
283	283	Circulatory disorders w AMI, expired w MCC	40	0.9573	19.6	16.3
284	283	Circulatory disorders w AMI, expired w CC	9	0.6453	21.6	18.0
285	283	Circulatory disorders w AMI, expired w/o CC/MCC	2	0.6453	21.6	18.0
286	286	Circulatory disorders except AMI, w card cath w MCC	10	1.0755	27.0	22.5
287	286	Circulatory disorders except AMI, w card cath w/o MCC	5	1.0755	27.0	22.5
288	288	Acute & subacute endocarditis w MCC	648	0.9964	26.2	21.8
289	288	Acute & subacute endocarditis w CC	210	0.8077	26.7	22.3
290	288	Acute & subacute endocarditis w/o CC/MCC	20	0.7541	23.8	19.8
291	291	Heart failure & shock w MCC	1,441	0.7432	21.6	18.0
292	291	Heart failure & shock w CC	740	0.6000	20.1	16.8
293	291	Heart failure & shock w/o CC/MCC	157	0.5266	18.7	15.6
294	294	Deep vein thrombophlebitis w CC/MCC	5	0.6453	21.6	18.0
295	294	Deep vein thrombophlebitis w/o CC/MCC	0	0.6453	21.6	18.0
296	296	Cardiac arrest, unexplained w MCC	0	0.9573	19.6	16.3
297	296	Cardiac arrest, unexplained w CC	0	0.6453	21.6	18.0
298	296	Cardiac arrest, unexplained w/o CC/MCC	0	0.6453	21.6	18.0
299	299	Peripheral vascular disorders w MCC	678	0.7862	23.5	19.6
300	299	Peripheral vascular disorders w CC	770	0.5905	22.2	18.5
301	299	Peripheral vascular disorders w/o CC/MCC	62	0.4514	19.3	16.1
302	302	Atherosclerosis w MCC	31	0.7367	23.0	19.2
303	302	Atherosclerosis w/o MCC	26	0.4398	17.5	14.6
304	304	Hypertension w MCC	9	1.0755	27.0	22.5
305	304	Hypertension w/o MCC	27	0.4546	18.9	15.8

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
306	306	Cardiac congenital & valvular disorders w MCC	74	0.8028	21.8	18.2
307	306	Cardiac congenital & valvular disorders w/o MCC	37	0.7504	26.0	21.7
308	308	Cardiac arrhythmia & conduction disorders w MCC	112	0.7438	23.0	19.2
309	308	Cardiac arrhythmia & conduction disorders w CC	85	0.5771	20.6	17.2
310	308	Cardiac arrhythmia & conduction disorders w/o CC/MCC	23	0.4806	19.3	16.1
311	311	Angina pectoris	3	0.6453	21.6	18.0
312	312	Syncope & collapse	38	0.4687	19.1	15.9
313	313	Chest pain	2	0.4806	19.3	16.1
314	314	Other circulatory system diagnoses w MCC	1,372	0.8919	23.5	19.6
315	314	Other circulatory system diagnoses w CC	279	0.6202	21.4	17.8
316	314	Other circulatory system diagnoses w/o CC/MCC	43	0.5201	18.5	15.4
326	326	Stomach, esophageal & duodenal proc w MCC	25	2.1918	43.9	36.6
327	326	Stomach, esophageal & duodenal proc w CC	6	0.7541	23.8	19.8
328	326	Stomach, esophageal & duodenal proc w/o CC/MCC	0	0.4806	19.3	16.1
329	329	Major small & large bowel procedures w MCC	35	2.2244	39.6	33.0
330	329	Major small & large bowel procedures w CC	14	1.6485	37.2	31.0
331	329	Major small & large bowel procedures w/o CC/MCC	1	0.7541	23.8	19.8
332	332	Rectal resection w MCC	0	1.7146	37.0	30.8
333	332	Rectal resection w CC	0	1.2418	33.0	27.5
334	332	Rectal resection w/o CC/MCC	0	0.4806	19.3	16.1
335	335	Peritoneal adhesiolysis w MCC	6	1.6485	37.2	31.0
336	335	Peritoneal adhesiolysis w CC	1	1.6485	37.2	31.0
337	335	Peritoneal adhesiolysis w/o CC/MCC	0	1.6485	37.2	31.0
338	338	Appendectomy w complicated principal diag w MCC	1	1.0755	27.0	22.5
339	338	Appendectomy w complicated principal diag w CC	0	0.7092	22.5	18.8
340	338	Appendectomy w complicated principal diag w/o CC/MCC	0	0.5461	19.1	15.9
341	341	Appendectomy w/o complicated principal diag w MCC	0	0.9465	24.5	20.4
342	341	Appendectomy w/o complicated principal diag w CC	0	0.7092	22.5	18.8
343	341	Appendectomy w/o complicated principal diag w/o CC/MCC	0	0.5461	19.1	15.9
344	344	Minor small & large bowel procedures w MCC	1	1.0755	27.0	22.5
345	344	Minor small & large bowel procedures w CC	0	1.0755	27.0	22.5
346	344	Minor small & large bowel procedures w/o CC/MCC	0	1.0755	27.0	22.5
347	347	Anal & stomal procedures w MCC	4	1.0755	27.0	22.5
348	347	Anal & stomal procedures w CC	2	0.7541	23.8	19.8
349	347	Anal & stomal procedures w/o CC/MCC	0	0.7541	23.8	19.8
350	350	Inguinal & femoral hernia procedures w MCC*	1	0.4806	19.3	16.1
351	350	Inguinal & femoral hernia procedures w CC*	0	0.4806	19.3	16.1
352	350	Inguinal & femoral hernia procedures w/o CC/MCC*	0	0.4806	19.3	16.1
353	353	Hernia procedures except inguinal & femoral w MCC	1	1.0755	27.0	22.5
354	353	Hernia procedures except inguinal & femoral w CC	1	1.0755	27.0	22.5

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
355	353	Hernia procedures except inguinal & femoral w/o CC/MCC	0	1.0755	27.0	22.5
356	356	Other digestive system O.R. procedures w MCC	116	1.7146	37.0	30.8
357	356	Other digestive system O.R. procedures w CC	45	1.2418	33.0	27.5
358	356	Other digestive system O.R. procedures w/o CC/MCC	1	0.4806	19.3	16.1
368	368	Major esophageal disorders w MCC	35	1.0061	26.5	22.1
369	368	Major esophageal disorders w CC	13	1.0061	26.5	22.1
370	368	Major esophageal disorders w/o CC/MCC	1	0.4806	19.3	16.1
371	371	Major gastrointestinal disorders & peritoneal infections w MCC	845	0.9465	24.5	20.4
372	371	Major gastrointestinal disorders & peritoneal infections w CC	365	0.7092	22.5	18.8
373	371	Major gastrointestinal disorders & peritoneal infections w/o CC/MCC	37	0.5461	19.1	15.9
374	374	Digestive malignancy w MCC	110	1.0797	25.4	21.2
375	374	Digestive malignancy w CC	66	0.6695	21.6	18.0
376	374	Digestive malignancy w/o CC/MCC	4	0.4806	19.3	16.1
377	377	G.I. hemorrhage w MCC	76	0.9642	24.0	20.0
378	377	G.I. hemorrhage w CC	43	0.5858	20.1	16.8
379	377	G.I. hemorrhage w/o CC/MCC	8	0.5858	20.1	16.8
380	380	Complicated peptic ulcer w MCC	16	1.0755	27.0	22.5
381	380	Complicated peptic ulcer w CC	17	0.7541	23.8	19.8
382	380	Complicated peptic ulcer w/o CC/MCC	1	0.7541	23.8	19.8
383	383	Uncomplicated peptic ulcer w MCC	8	0.7541	23.8	19.8
384	383	Uncomplicated peptic ulcer w/o MCC	5	0.6453	21.6	18.0
385	385	Inflammatory bowel disease w MCC	32	1.2496	26.1	21.8
386	385	Inflammatory bowel disease w CC	19	0.6453	21.6	18.0
387	385	Inflammatory bowel disease w/o CC/MCC	2	0.4806	19.3	16.1
388	388	G.I. obstruction w MCC	185	1.0124	23.9	19.9
389	388	G.I. obstruction w CC	96	0.7251	21.3	17.8
390	388	G.I. obstruction w/o CC/MCC	14	0.6453	21.6	18.0
391	391	Esophagitis, gastroent & misc digest disorders w MCC	371	0.8812	23.4	19.5
392	391	Esophagitis, gastroent & misc digest disorders w/o MCC	236	0.6323	21.1	17.6
393	393	Other digestive system diagnoses w MCC	841	1.0982	27.2	22.7
394	393	Other digestive system diagnoses w CC	449	0.7419	22.8	19.0
395	393	Other digestive system diagnoses w/o CC/MCC	39	0.6016	19.8	16.5
405	405	Pancreas, liver & shunt procedures w MCC	10	1.6485	37.2	31.0
406	405	Pancreas, liver & shunt procedures w CC	4	1.6485	37.2	31.0
407	405	Pancreas, liver & shunt procedures w/o CC/MCC	0	1.6485	37.2	31.0
408	408	Biliary tract proc except only cholecyst w or w/o c.d.e. w MCC	0	0.7541	23.8	19.8

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
409	408	Biliary tract proc except only cholecyst w or w/o c.d.e. w CC	0	0.7541	23.8	19.8
410	408	Biliary tract proc except only cholecyst w or w/o c.d.e. w/o CC/MCC	0	0.7541	23.8	19.8
411	411	Cholecystectomy w c.d.e. w MCC	0	0.6453	21.6	18.0
412	411	Cholecystectomy w c.d.e. w CC	0	0.6453	21.6	18.0
413	411	Cholecystectomy w c.d.e. w/o CC/MCC	0	0.6453	21.6	18.0
414	414	Cholecystectomy except by laparoscope w/o c.d.e. w MCC	6	1.6485	37.2	31.0
415	414	Cholecystectomy except by laparoscope w/o c.d.e. w CC	0	0.6453	21.6	18.0
416	414	Cholecystectomy except by laparoscope w/o c.d.e. w/o CC/MCC	0	0.6453	21.6	18.0
417	417	Laparoscopic cholecystectomy w/o c.d.e. w MCC	9	1.6485	37.2	31.0
418	417	Laparoscopic cholecystectomy w/o c.d.e. w CC	2	0.6453	21.6	18.0
419	417	Laparoscopic cholecystectomy w/o c.d.e. w/o CC/MCC	0	0.6453	21.6	18.0
420	420	Hepatobiliary diagnostic procedures w MCC	2	1.6485	37.2	31.0
421	420	Hepatobiliary diagnostic procedures w CC	0	0.7541	23.8	19.8
422	420	Hepatobiliary diagnostic procedures w/o CC/MCC	0	0.7541	23.8	19.8
423	423	Other hepatobiliary or pancreas O.R. procedures w MCC	18	1.0755	27.0	22.5
424	423	Other hepatobiliary or pancreas O.R. procedures w CC	4	0.7541	23.8	19.8
425	423	Other hepatobiliary or pancreas O.R. procedures w/o CC/MCC	0	0.7541	23.8	19.8
432	432	Cirrhosis & alcoholic hepatitis w MCC	67	0.6927	19.9	16.6
433	432	Cirrhosis & alcoholic hepatitis w CC	22	0.6453	21.6	18.0
434	432	Cirrhosis & alcoholic hepatitis w/o CC/MCC	0	0.6453	21.6	18.0
435	435	Malignancy of hepatobiliary system or pancreas w MCC	33	0.7659	21.2	17.7
436	435	Malignancy of hepatobiliary system or pancreas w CC	21	0.6453	21.6	18.0
437	435	Malignancy of hepatobiliary system or pancreas w/o CC/MCC	2	0.4806	19.3	16.1
438	438	Disorders of pancreas except malignancy w MCC	315	1.0704	24.5	20.4
439	438	Disorders of pancreas except malignancy w CC	126	0.8015	20.5	17.1
440	438	Disorders of pancreas except malignancy w/o CC/MCC	12	0.4806	19.3	16.1
441	441	Disorders of liver except malig,cirr,alc hepa w MCC	169	0.8210	22.0	18.3
442	441	Disorders of liver except malig,cirr,alc hepa w CC	69	0.6458	22.1	18.4
443	441	Disorders of liver except malig,cirr,alc hepa w/o CC/MCC	8	0.4806	19.3	16.1
444	444	Disorders of the biliary tract w MCC	118	0.8572	22.8	19.0
445	444	Disorders of the biliary tract w CC	47	0.5941	21.0	17.5

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
446	444	Disorders of the biliary tract w/o CC/MCC	9	0.4806	19.3	16.1
453	453	Combined anterior/posterior spinal fusion w MCC	1	1.6485	37.2	31.0
454	453	Combined anterior/posterior spinal fusion w CC	1	1.6485	37.2	31.0
455	453	Combined anterior/posterior spinal fusion w/o CC/MCC	0	1.6485	37.2	31.0
456	456	Spinal fusion exc cerv w spinal curv, malig or 9+ fusions w MCC	1	1.6485	37.2	31.0
457	456	Spinal fusion exc cerv w spinal curv, malig or 9+ fusions w CC	1	1.6485	37.2	31.0
458	456	Spinal fusion exc cerv w spinal curv, malig or 9+ fusions w/o CC/MCC	0	1.6485	37.2	31.0
459	459	Spinal fusion except cervical w MCC	3	1.6485	37.2	31.0
460	459	Spinal fusion except cervical w/o MCC	0	1.6485	37.2	31.0
461	461	Bilateral or multiple major joint procs of lower extremity w MCC	0	1.6485	37.2	31.0
462	461	Bilateral or multiple major joint procs of lower extremity w/o MCC	0	1.6485	37.2	31.0
463	463	Wnd debrid & skn grft exc hand, for musculo-conn tiss dis w MCC	584	1.4502	38.7	32.3
464	463	Wnd debrid & skn grft exc hand, for musculo-conn tiss dis w CC	552	1.1308	36.3	30.3
465	463	Wnd debrid & skn grft exc hand, for musculo-conn tiss dis w/o CC/MCC	60	0.9352	33.1	27.6
466	466	Revision of hip or knee replacement w MCC	5	1.6485	37.2	31.0
467	466	Revision of hip or knee replacement w CC	6	1.6485	37.2	31.0
468	466	Revision of hip or knee replacement w/o CC/MCC	0	1.6485	37.2	31.0
469	469	Major joint replacement or reattachment of lower extremity w MCC	1	1.6485	37.2	31.0
470	469	Major joint replacement or reattachment of lower extremity w/o MCC	3	1.6485	37.2	31.0
471	471	Cervical spinal fusion w MCC	3	1.0755	27.0	22.5
472	471	Cervical spinal fusion w CC	2	0.7541	23.8	19.8
473	471	Cervical spinal fusion w/o CC/MCC	0	0.7541	23.8	19.8
474	474	Amputation for musculoskeletal sys & conn tissue dis w MCC	89	1.3457	35.6	29.7
475	474	Amputation for musculoskeletal sys & conn tissue dis w CC	73	1.0602	32.3	26.9
476	474	Amputation for musculoskeletal sys & conn tissue dis w/o CC/MCC	4	0.7541	23.8	19.8
477	477	Biopsies of musculoskeletal system & connective tissue w MCC	34	1.3582	35.4	29.5
478	477	Biopsies of musculoskeletal system & connective tissue w CC	28	1.2963	39.1	32.6
479	477	Biopsies of musculoskeletal system & connective tissue w/o CC/MCC	3	0.6453	21.6	18.0

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
480	480	Hip & femur procedures except major joint w MCC	13	1.6485	37.2	31.0
481	480	Hip & femur procedures except major joint w CC	8	1.6485	37.2	31.0
482	480	Hip & femur procedures except major joint w/o CC/MCC	0	1.6485	37.2	31.0
483	483	Major joint & limb reattachment proc of upper extremity w CC/MCC	0	1.6485	37.2	31.0
484	483	Major joint & limb reattachment proc of upper extremity w/o CC/MCC	0	1.6485	37.2	31.0
485	485	Knee procedures w pdx of infection w MCC	8	1.6485	37.2	31.0
486	485	Knee procedures w pdx of infection w CC	4	1.6485	37.2	31.0
487	485	Knee procedures w pdx of infection w/o CC/MCC	2	0.7541	23.8	19.8
488	488	Knee procedures w/o pdx of infection w CC/MCC*	4	1.0755	27.0	22.5
489	488	Knee procedures w/o pdx of infection w/o CC/MCC*	0	1.0755	27.0	22.5
490	490	Back & neck procedures except spinal fusion w CC/MCC or disc devices	4	1.0755	27.0	22.5
491	490	Back & neck procedures except spinal fusion w/o CC/MCC	0	1.0755	27.0	22.5
492	492	Lower extrem & humer proc except hip,foot,femur w MCC*	4	1.6485	37.2	31.0
493	492	Lower extrem & humer proc except hip,foot,femur w CC*	9	0.7541	23.8	19.8
494	492	Lower extrem & humer proc except hip,foot,femur w/o CC/MCC*	0	0.7541	23.8	19.8
495	495	Local excision & removal int fix devices exc hip & femur w MCC	30	1.2997	38.1	31.8
496	495	Local excision & removal int fix devices exc hip & femur w CC	41	1.1427	34.5	28.8
497	495	Local excision & removal int fix devices exc hip & femur w/o CC/MCC	5	0.6453	21.6	18.0
498	498	Local excision & removal int fix devices of hip & femur w CC/MCC	19	1.6485	37.2	31.0
499	498	Local excision & removal int fix devices of hip & femur w/o CC/MCC	1	0.7541	23.8	19.8
500	500	Soft tissue procedures w MCC	105	1.4011	36.9	30.8
501	500	Soft tissue procedures w CC	72	1.0149	32.9	27.4
502	500	Soft tissue procedures w/o CC/MCC	7	1.0149	32.9	27.4
503	503	Foot procedures w MCC	24	1.0755	27.0	22.5
504	503	Foot procedures w CC	29	1.0304	31.1	25.9
505	503	Foot procedures w/o CC/MCC	4	1.0304	31.1	25.9
506	506	Major thumb or joint procedures	0	1.0755	27.0	22.5
507	507	Major shoulder or elbow joint procedures w CC/MCC	2	1.6485	37.2	31.0
508	507	Major shoulder or elbow joint procedures w/o CC/MCC	0	1.6485	37.2	31.0
509	509	Arthroscopy	0	1.0304	31.1	25.9

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
510	510	Shoulder,elbow or forearm proc,exc major joint proc w MCC	3	1.0755	27.0	22.5
511	510	Shoulder,elbow or forearm proc,exc major joint proc w CC	2	0.7541	23.8	19.8
512	510	Shoulder,elbow or forearm proc,exc major joint proc w/o CC/MCC	0	0.7541	23.8	19.8
513	513	Hand or wrist proc, except major thumb or joint proc w CC/MCC	9	1.0755	27.0	22.5
514	513	Hand or wrist proc, except major thumb or joint proc w/o CC/MCC	1	1.0755	27.0	22.5
515	515	Other musculoskelet sys & conn tiss O.R. proc w MCC	45	1.1904	30.1	25.1
516	515	Other musculoskelet sys & conn tiss O.R. proc w CC	20	1.0755	27.0	22.5
517	515	Other musculoskelet sys & conn tiss O.R. proc w/o CC/MCC	1	0.7541	23.8	19.8
533	533	Fractures of femur w MCC	0	1.6485	37.2	31.0
534	533	Fractures of femur w/o MCC	1	0.4806	19.3	16.1
535	535	Fractures of hip & pelvis w MCC	14	0.6453	21.6	18.0
536	535	Fractures of hip & pelvis w/o MCC	12	0.4806	19.3	16.1
537	537	Sprains, strains, & dislocations of hip, pelvis & thigh w CC/MCC	1	1.0755	27.0	22.5
538	537	Sprains, strains, & dislocations of hip, pelvis & thigh w/o CC/MCC	0	1.0755	27.0	22.5
539	539	Osteomyelitis w MCC	1,280	1.0288	30.0	25.0
540	539	Osteomyelitis w CC	1,286	0.8027	28.7	23.9
541	539	Osteomyelitis w/o CC/MCC	201	0.6973	26.6	22.2
542	542	Pathological fractures & musculoskelet & conn tiss malig w MCC	40	0.8081	23.8	19.8
543	542	Pathological fractures & musculoskelet & conn tiss malig w CC	34	0.6149	21.6	18.0
544	542	Pathological fractures & musculoskelet & conn tiss malig w/o CC/MCC	3	0.4806	19.3	16.1
545	545	Connective tissue disorders w MCC	55	0.8062	21.8	18.2
546	545	Connective tissue disorders w CC	31	0.5778	21.1	17.6
547	545	Connective tissue disorders w/o CC/MCC	4	0.4806	19.3	16.1
548	548	Septic arthritis w MCC	227	0.8513	26.5	22.1
549	548	Septic arthritis w CC	177	0.7361	25.6	21.3
550	548	Septic arthritis w/o CC/MCC	61	0.5232	23.4	19.5
551	551	Medical back problems w MCC	104	0.9024	27.3	22.8
552	551	Medical back problems w/o MCC	132	0.5926	23.1	19.3
553	553	Bone diseases & arthropathies w MCC	16	0.6453	21.6	18.0
554	553	Bone diseases & arthropathies w/o MCC	34	0.4690	19.9	16.6
555	555	Signs & symptoms of musculoskeletal system & conn tissue w MCC	7	0.7541	23.8	19.8

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
556	555	Signs & symptoms of musculoskeletal system & conn tissue w/o MCC	17	0.4806	19.3	16.1
557	557	Tendonitis, myositis & bursitis w MCC	112	0.8753	24.6	20.5
558	557	Tendonitis, myositis & bursitis w/o MCC	127	0.6876	22.9	19.1
559	559	Aftercare, musculoskeletal system & connective tissue w MCC	1,567	0.8163	25.7	21.4
560	559	Aftercare, musculoskeletal system & connective tissue w CC	1,588	0.6794	25.4	21.2
561	559	Aftercare, musculoskeletal system & connective tissue w/o CC/MCC	431	0.5369	22.2	18.5
562	562	Fx, sprn, strn & disl except femur, hip, pelvis & thigh w MCC	21	0.7247	24.0	20.0
563	562	Fx, sprn, strn & disl except femur, hip, pelvis & thigh w/o MCC	8	0.7247	24.0	20.0
564	564	Other musculoskeletal sys & connective tissue diagnoses w MCC	339	0.8900	24.5	20.4
565	564	Other musculoskeletal sys & connective tissue diagnoses w CC	263	0.6894	24.2	20.2
566	564	Other musculoskeletal sys & connective tissue diagnoses w/o CC/MCC	32	0.5183	21.4	17.8
573	573	Skin graft &/or debrid for skn ulcer or cellulitis w MCC	1,834	1.3675	37.8	31.5
574	573	Skin graft &/or debrid for skn ulcer or cellulitis w CC	1,350	1.0080	35.0	29.2
575	573	Skin graft &/or debrid for skn ulcer or cellulitis w/o CC/MCC	94	0.8021	28.7	23.9
576	576	Skin graft &/or debrid exc for skin ulcer or cellulitis w MCC	43	1.2401	32.3	26.9
577	576	Skin graft &/or debrid exc for skin ulcer or cellulitis w CC	23	1.0755	27.0	22.5
578	576	Skin graft &/or debrid exc for skin ulcer or cellulitis w/o CC/MCC	6	0.4806	19.3	16.1
579	579	Other skin, subcut tiss & breast proc w MCC	552	1.3169	35.7	29.8
580	579	Other skin, subcut tiss & breast proc w CC	292	0.9474	32.2	26.8
581	579	Other skin, subcut tiss & breast proc w/o CC/MCC	23	0.7541	23.8	19.8
582	582	Mastectomy for malignancy w CC/MCC	4	0.7541	23.8	19.8
583	582	Mastectomy for malignancy w/o CC/MCC	0	0.7541	23.8	19.8
584	584	Breast biopsy, local excision & other breast procedures w CC/MCC	2	1.0755	27.0	22.5
585	584	Breast biopsy, local excision & other breast procedures w/o CC/MCC	0	1.0755	27.0	22.5
592	592	Skin ulcers w MCC	3,617	0.9317	26.7	22.3
593	592	Skin ulcers w CC	2,502	0.6908	25.5	21.3
594	592	Skin ulcers w/o CC/MCC	228	0.5721	22.0	18.3
595	595	Major skin disorders w MCC	36	0.6878	23.2	19.3

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
596	595	Major skin disorders w/o MCC	34	0.5088	19.6	16.3
597	597	Malignant breast disorders w MCC*	10	0.7541	23.8	19.8
598	597	Malignant breast disorders w CC*	8	0.6453	21.6	18.0
599	597	Malignant breast disorders w/o CC/MCC*	0	0.6453	21.6	18.0
600	600	Non-malignant breast disorders w CC/MCC	18	0.6453	21.6	18.0
601	600	Non-malignant breast disorders w/o CC/MCC	3	0.4806	19.3	16.1
602	602	Cellulitis w MCC	946	0.7103	22.6	18.8
603	602	Cellulitis w/o MCC	1,431	0.5154	19.3	16.1
604	604	Trauma to the skin, subcut tiss & breast w MCC	44	0.8457	25.6	21.3
605	604	Trauma to the skin, subcut tiss & breast w/o MCC	45	0.5806	21.0	17.5
606	606	Minor skin disorders w MCC	90	1.1968	27.3	22.8
607	606	Minor skin disorders w/o MCC	105	0.5751	21.7	18.1
614	614	Adrenal & pituitary procedures w CC/MCC	0	1.0388	31.6	26.3
615	614	Adrenal & pituitary procedures w/o CC/MCC	0	1.0388	31.6	26.3
616	616	Amputat of lower limb for endocrine,nutrit,& metabol dis w MCC	62	1.5700	38.2	31.8
617	616	Amputat of lower limb for endocrine,nutrit,& metabol dis w CC	143	1.0927	31.4	26.2
618	616	Amputat of lower limb for endocrine,nutrit,& metabol dis w/o CC/MCC	0	1.0927	31.4	26.2
619	619	O.R. procedures for obesity w MCC*	1	1.6485	37.2	31.0
620	619	O.R. procedures for obesity w CC*	2	0.7541	23.8	19.8
621	619	O.R. procedures for obesity w/o CC/MCC*	0	0.7541	23.8	19.8
622	622	Skin grafts & wound debrid for endoc, nutrit & metab dis w MCC	119	1.2595	33.7	28.1
623	622	Skin grafts & wound debrid for endoc, nutrit & metab dis w CC	334	0.9925	30.7	25.6
624	622	Skin grafts & wound debrid for endoc, nutrit & metab dis w/o CC/MCC	12	0.9925	30.7	25.6
625	625	Thyroid, parathyroid & thyroglossal procedures w MCC	0	1.4401	34.0	28.3
626	625	Thyroid, parathyroid & thyroglossal procedures w CC	0	1.0388	31.6	26.3
627	625	Thyroid, parathyroid & thyroglossal procedures w/o CC/MCC	0	1.0388	31.6	26.3
628	628	Other endocrine, nutrit & metab O.R. proc w MCC	60	1.4401	34.0	28.3
629	628	Other endocrine, nutrit & metab O.R. proc w CC	122	1.0388	31.6	26.3
630	628	Other endocrine, nutrit & metab O.R. proc w/o CC/MCC	0	1.0388	31.6	26.3
637	637	Diabetes w MCC	432	0.8765	25.8	21.5
638	637	Diabetes w CC	1,185	0.6982	24.3	20.3
639	637	Diabetes w/o CC/MCC	38	0.4078	18.0	15.0
640	640	Nutritional & misc metabolic disorders w MCC	679	0.8140	22.3	18.6
641	640	Nutritional & misc metabolic disorders w/o MCC	520	0.6492	21.5	17.9
642	642	Inborn errors of metabolism	7	1.6485	37.2	31.0

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
643	643	Endocrine disorders w MCC	19	0.7541	23.8	19.8
644	643	Endocrine disorders w CC	18	0.6453	21.6	18.0
645	643	Endocrine disorders w/o CC/MCC	3	0.6453	21.6	18.0
652	652	Kidney transplant	0	0.0000	0.0	0.0
653	653	Major bladder procedures w MCC	0	0.7541	23.8	19.8
654	653	Major bladder procedures w CC	0	0.7541	23.8	19.8
655	653	Major bladder procedures w/o CC/MCC	0	0.7541	23.8	19.8
656	656	Kidney & ureter procedures for neoplasm w MCC	2	0.7541	23.8	19.8
657	656	Kidney & ureter procedures forneoplasm w CC	0	0.7541	23.8	19.8
658	656	Kidney & ureter procedures for neoplasm w/o CC/MCC	0	0.7541	23.8	19.8
659	659	Kidney & ureter procedures for non-neoplasm w MCC*	4	1.6485	37.2	31.0
660	659	Kidney & ureter procedures for non-neoplasm w CC*	9	0.7541	23.8	19.8
661	659	Kidney & ureter procedures for non-neoplasm w/o CC/MCC*	0	0.7541	23.8	19.8
662	662	Minor bladder procedures w MCC	1	1.6485	37.2	31.0
663	662	Minor bladder procedures w CC	3	0.6453	21.6	18.0
664	662	Minor bladder procedures w/o CC/MCC	0	0.6453	21.6	18.0
665	665	Prostatectomy w MCC	0	0.7541	23.8	19.8
666	665	Prostatectomy w CC	1	0.7541	23.8	19.8
667	665	Prostatectomy w/o CC/MCC	1	0.4806	19.3	16.1
668	668	Transurethral procedures w MCC	3	0.7541	23.8	19.8
669	668	Transurethral procedures w CC	7	0.7541	23.8	19.8
670	668	Transurethral procedures w/o CC/MCC	0	0.7541	23.8	19.8
671	671	Urethral procedures w CC/MCC	2	1.0755	27.0	22.5
672	671	Urethral procedures w/o CC/MCC	0	1.0755	27.0	22.5
673	673	Other kidney & urinary tract procedures w MCC	154	1.3309	32.1	26.8
674	673	Other kidney & urinary tract procedures w CC	56	0.9480	28.7	23.9
675	673	Other kidney & urinary tract procedures w/o CC/MCC	5	0.6453	21.6	18.0
682	682	Renal failure w MCC	1,476	0.8992	23.3	19.4
683	682	Renal failure w CC	587	0.7182	22.1	18.4
684	682	Renal failure w/o CC/MCC	36	0.5324	17.9	14.9
685	685	Admit for renal dialysis	10	0.6453	21.6	18.0
686	686	Kidney & urinary tract neoplasms w MCC*	31	0.8000	23.5	19.6
687	686	Kidney & urinary tract neoplasms w CC*	20	0.7541	23.8	19.8
688	686	Kidney & urinary tract neoplasms w/o CC/MCC*	0	0.7541	23.8	19.8
689	689	Kidney & urinary tract infections w MCC	895	0.6748	22.6	18.8
690	689	Kidney & urinary tract infections w/o MCC	703	0.5312	19.8	16.5
691	691	Urinary stones w esw lithotripsy w CC/MCC	1	1.0755	27.0	22.5
692	691	Urinary stones w esw lithotripsy w/o CC/MCC	0	0.4806	19.3	16.1
693	693	Urinary stones w/o esw lithotripsy w MCC	5	0.7541	23.8	19.8
694	693	Urinary stones w/ot esw lithotripsy w/o MCC	2	0.4806	19.3	16.1

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
695	695	Kidney & urinary tract signs & symptoms w MCC	3	0.7541	23.8	19.8
696	695	Kidney & urinary tract signs & symptoms w/o MCC	2	0.4806	19.3	16.1
697	697	Urethral stricture	1	0.6453	21.6	18.0
698	698	Other kidney & urinary tract diagnoses w MCC	237	0.8692	23.2	19.3
699	698	Other kidney & urinary tract diagnoses w CC	142	0.7161	22.4	18.7
700	698	Other kidney & urinary tract diagnoses w/o CC/MCC	13	0.6453	21.6	18.0
707	707	Major male pelvic procedures w CC/MCC	0	0.7541	23.8	19.8
708	707	Major male pelvic procedures w/o CC/MCC	0	0.7541	23.8	19.8
709	709	Penis procedures w CC/MCC	2	1.6485	37.2	31.0
710	709	Penis procedures w/o CC/MCC	0	1.6485	37.2	31.0
711	711	Testes procedures w CC/MCC	8	1.0755	27.0	22.5
712	711	Testes procedures w/o CC/MCC	0	1.0755	27.0	22.5
713	713	Transurethral prostatectomy w CC/MCC	0	0.7541	23.8	19.8
714	713	Transurethral prostatectomy w/o CC/MCC	0	0.7541	23.8	19.8
715	715	Other male reproductive system O.R. proc for malignancy w CC/MCC	0	1.6485	37.2	31.0
716	715	Other male reproductive system O.R. proc for malignancy w/o CC/MCC	0	1.6485	37.2	31.0
717	717	Other male reproductive system O.R. proc exc malignancy w CC/MCC	12	1.6485	37.2	31.0
718	717	Other male reproductive system O.R. proc exc malignancy w/o CC/MCC	0	1.6485	37.2	31.0
722	722	Malignancy, male reproductive system w MCC	8	0.6453	21.6	18.0
723	722	Malignancy, male reproductive system w CC	10	0.6453	21.6	18.0
724	722	Malignancy, male reproductive system w/o CC/MCC	0	0.6453	21.6	18.0
725	725	Benign prostatic hypertrophy w MCC	4	0.4806	19.3	16.1
726	725	Benign prostatic hypertrophy w/o MCC	1	0.4806	19.3	16.1
727	727	Inflammation of the male reproductive system w MCC	66	0.7711	24.0	20.0
728	727	Inflammation of the male reproductive system w/o MCC	66	0.4981	20.7	17.3
729	729	Other male reproductive system diagnoses w CC/MCC	72	0.8481	23.7	19.8
730	729	Other male reproductive system diagnoses w/o CC/MCC	1	0.4806	19.3	16.1
734	734	Pelvic evisceration, rad hysterectomy & rad vulvectomy w CC/MCC	0	1.6485	37.2	31.0
735	734	Pelvic evisceration, rad hysterectomy & rad vulvectomy w/o CC/MCC	0	1.6485	37.2	31.0
736	736	Uterine & adnexa proc for ovarian or adnexal malignancy w MCC*	0	0.9344	22.3	18.6
737	736	Uterine & adnexa proc for ovarian or adnexal malignancy w CC*	0	0.6453	21.6	18.0
738	736	Uterine & adnexa proc for ovarian or adnexal malignancy w/o CC/MCC*	0	0.6453	21.6	18.0

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
739	739	Uterine,adnexa proc for non-ovarian/adnexal malig w MCC*	0	1.4401	34.0	28.3
740	739	Uterine,adnexa proc for non-ovarian/adnexal malig w CC*	0	0.6453	21.6	18.0
741	739	Uterine,adnexa proc for non-ovarian/adnexal malig w/o CC/MCC*	0	0.6453	21.6	18.0
742	742	Uterine & adnexa proc for non-malignancy w CC/MCC*	0	0.6453	21.6	18.0
743	742	Uterine & adnexa proc for non-malignancy w/o CC/MCC*	0	0.6453	21.6	18.0
744	744	D&C, conization, laparascopy & tubal interruption w CC/MCC	0	0.7541	23.8	19.8
745	744	D&C, conization, laparascopy & tubal interruption w/o CC/MCC	0	0.7541	23.8	19.8
746	746	Vagina, cervix & vulva procedures w CC/MCC	1	0.6453	21.6	18.0
747	746	Vagina, cervix & vulva procedures w/o CC/MCC	1	0.6453	21.6	18.0
748	748	Female reproductive system reconstructive procedures	0	0.7541	23.8	19.8
749	749	Other female reproductive system O.R. procedures w CC/MCC	4	0.7541	23.8	19.8
750	749	Other female reproductive system O.R. procedures w/o CC/MCC	0	0.7541	23.8	19.8
754	754	Malignancy, female reproductive system w MCC	25	0.9344	22.3	18.6
755	754	Malignancy, female reproductive system w CC	19	0.6453	21.6	18.0
756	754	Malignancy, female reproductive system w/o CC/MCC	0	0.6453	21.6	18.0
757	757	Infections, female reproductive system w MCC	78	0.8759	24.2	20.2
758	757	Infections, female reproductive system w CC	34	0.7888	21.3	17.8
759	757	Infections, female reproductive system w/o CC/MCC	2	0.6453	21.6	18.0
760	760	Menstrual & other female reproductive system disorders w CC/MCC*	11	0.7541	23.8	19.8
761	760	Menstrual & other female reproductive system disorders w/o CC/MCC*	0	0.7541	23.8	19.8
765	765	Cesarean section w CC/MCC	0	1.0388	31.6	26.3
766	765	Cesarean section w/o CC/MCC	0	1.0388	31.6	26.3
767	767	Vaginal delivery w sterilization &/or D&C	0	1.0388	31.6	26.3
768	768	Vaginal delivery w O.R. proc except steril &/or D&C	0	1.0388	31.6	26.3
769	769	Postpartum & post abortion diagnoses w O.R. procedure	0	1.0388	31.6	26.3
770	770	Abortion w D&C, aspiration curettage or hysterotomy	0	1.0388	31.6	26.3
774	774	Vaginal delivery w complicating diagnoses	0	1.0388	31.6	26.3
775	775	Vaginal delivery w/o complicating diagnoses	0	1.0388	31.6	26.3
776	776	Postpartum & post abortion diagnoses w/o O.R. procedure	1	1.6485	37.2	31.0

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
777	777	Ectopic pregnancy	0	1.0388	31.6	26.3
778	778	Threatened abortion	0	0.6453	21.6	18.0
779	779	Abortion w/o D&C	0	0.6453	21.6	18.0
780	780	False labor	0	0.6453	21.6	18.0
781	781	Other antepartum diagnoses w medical complications	3	0.7541	23.8	19.8
782	782	Other antepartum diagnoses w/o medical complications	0	0.7541	23.8	19.8
789	789	Neonates, died or transferred to another acute care facility	0	0.7541	23.8	19.8
790	790	Extreme immaturity or respiratory distress syndrome, neonate	0	0.7541	23.8	19.8
791	791	Prematurity w major problems	0	0.7541	23.8	19.8
792	792	Prematurity w/o major problems	0	0.7541	23.8	19.8
793	793	Full term neonate w major problems	0	0.7541	23.8	19.8
794	794	Neonate w other significant problems	0	0.7541	23.8	19.8
795	795	Normal newborn	0	0.7541	23.8	19.8
799	799	Splenectomy w MCC	0	1.0755	27.0	22.5
800	799	Splenectomy w CC	1	1.0755	27.0	22.5
801	799	Splenectomy w/o CC/MCC	0	1.0755	27.0	22.5
802	802	Other O.R. proc of the blood & blood forming organs w MCC*	2	0.6453	21.6	18.0
803	802	Other O.R. proc of the blood & blood forming organs w CC*	2	0.4806	19.3	16.1
804	802	Other O.R. proc of the blood & blood forming organs w/o CC/MCC*	0	0.4806	19.3	16.1
808	808	Major hematol/immun diag exc sickle cell crisis & coagul w MCC	12	0.6779	19.8	16.5
809	808	Major hematol/immun diag exc sickle cell crisis & coagul w CC	15	0.6779	19.8	16.5
810	808	Major hematol/immun diag exc sickle cell crisis & coagul w/o CC/MCC	0	0.5783	19.5	16.3
811	811	Red blood cell disorders w MCC	39	0.8280	22.1	18.4
812	811	Red blood cell disorders w/o MCC	40	0.5783	19.5	16.3
813	813	Coagulation disorders	41	0.8246	22.3	18.6
814	814	Reticuloendothelial & immunity disorders w MCC	11	1.0755	27.0	22.5
815	814	Reticuloendothelial & immunity disorders w CC	9	0.6453	21.6	18.0
816	814	Reticuloendothelial & immunity disorders w/o CC/MCC	4	0.6453	21.6	18.0
820	820	Lymphoma & leukemia w major O.R. procedure w MCC*	0	1.6485	37.2	31.0
821	820	Lymphoma & leukemia w major O.R. procedure w CC*	1	0.7541	23.8	19.8
822	820	Lymphoma & leukemia w major O.R. procedure w/o CC/MCC*	0	0.7541	23.8	19.8

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
823	823	Lymphoma & non-acute leukemia w other O.R. proc w MCC	2	1.6485	37.2	31.0
824	823	Lymphoma & non-acute leukemia w other O.R. proc w CC	2	1.6485	37.2	31.0
825	823	Lymphoma & non-acute leukemia w other O.R. proc w/o CC/MCC	0	1.6485	37.2	31.0
826	826	Myeloprolif disord or poorly diff neopl w maj O.R. proc w MCC	1	1.0755	27.0	22.5
827	826	Myeloprolif disord or poorly diff neopl w maj O.R. proc w CC	1	1.0755	27.0	22.5
828	826	Myeloprolif disord or poorly diff neopl w maj O.R. proc w/o CC/MCC	0	1.0755	27.0	22.5
829	829	Myeloprolif disord or poorly diff neopl w other O.R. proc w CC/MCC	14	1.0755	27.0	22.5
830	829	Myeloprolif disord or poorly diff neopl w other O.R. proc w/o CC/MCC	0	1.0755	27.0	22.5
834	834	Acute leukemia w/o major O.R. procedure w MCC*	21	1.0755	27.0	22.5
835	834	Acute leukemia w/o major O.R. procedure w CC*	9	0.7541	23.8	19.8
836	834	Acute leukemia w/o major O.R. procedure w/o CC/MCC*	0	0.7541	23.8	19.8
837	837	Chemo w acute leukemia as sdx or w high dose chemo agent w MCC*	1	0.6453	21.6	18.0
838	837	Chemo w acute leukemia as sdx or w high dose chemo agent w CC*	0	0.6453	21.6	18.0
839	837	Chemo w acute leukemia as sdx or w high dose chemo agent w/o CC/MCC*	0	0.6453	21.6	18.0
840	840	Lymphoma & non-acute leukemia w MCC	85	1.0020	24.0	20.0
841	840	Lymphoma & non-acute leukemia w CC	58	0.8928	22.3	18.6
842	840	Lymphoma & non-acute leukemia w/o CC/MCC	10	0.6453	21.6	18.0
843	843	Other myeloprolif dis or poorly diff neopl diag w MCC*	14	0.7541	23.8	19.8
844	843	Other myeloprolif dis or poorly diff neopl diag w CC*	13	0.7541	23.8	19.8
845	843	Other myeloprolif dis or poorly diff neopl diag w/o CC/MCC*	0	0.7541	23.8	19.8
846	846	Chemotherapy w/o acute leukemia as secondary diagnosis w MCC	59	1.5105	29.5	24.6
847	846	Chemotherapy w/o acute leukemia as secondary diagnosis w CC	41	1.1015	25.0	20.8
848	846	Chemotherapy w/o acute leukemia as secondary diagnosis w/o CC/MCC	1	1.1015	25.0	20.8
849	849	Radiotherapy	141	0.7939	22.3	18.6
853	853	Infectious & parasitic diseases w O.R. procedure w MCC	748	1.7474	37.9	31.6

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
854	853	Infectious & parasitic diseases w O.R. procedure w CC	182	1.2160	34.8	29.0
855	853	Infectious & parasitic diseases w O.R. procedure w/o CC/MCC	13	1.0755	27.0	22.5
856	856	Postoperative or post-traumatic infections w O.R. proc w MCC	319	1.3916	35.0	29.2
857	856	Postoperative or post-traumatic infections w O.R. proc w CC	173	1.0325	30.9	25.8
858	856	Postoperative or post-traumatic infections w O.R. proc w/o CC/MCC	24	0.7541	23.8	19.8
862	862	Postoperative & post-traumatic infections w MCC	1,465	0.9533	25.3	21.1
863	862	Postoperative & post-traumatic infections w/o MCC	1,108	0.6800	23.2	19.3
864	864	Fever of unknown origin	6	0.6453	21.6	18.0
865	865	Viral illness w MCC	34	0.7966	24.2	20.2
866	865	Viral illness w/o MCC	19	0.7541	23.8	19.8
867	867	Other infectious & parasitic diseases diagnoses w MCC	374	1.1330	24.0	20.0
868	867	Other infectious & parasitic diseases diagnoses w CC	69	0.6705	22.0	18.3
869	867	Other infectious & parasitic diseases diagnoses w/o CC/MCC	6	0.4806	19.3	16.1
870	870	Septicemia w MV 96+ hours	1,019	2.1463	32.1	26.8
871	871	Septicemia w/o MV 96+ hours w MCC	5,385	0.8653	23.4	19.5
872	871	Septicemia w/o MV 96+ hours w/o MCC	1,436	0.6393	21.6	18.0
876	876	O.R. procedure w principal diagnoses of mental illness	3	1.6485	37.2	31.0
880	880	Acute adjustment reaction & psychosocial dysfunction	7	0.4806	19.3	16.1
881	881	Depressive neuroses	24	0.4806	19.3	16.1
882	882	Neuroses except depressive	11	0.6453	21.6	18.0
883	883	Disorders of personality & impulse control	5	0.4806	19.3	16.1
884	884	Organic disturbances & mental retardation	84	0.5367	27.8	23.2
885	885	Psychoses	1,162	0.4047	22.9	19.1
886	886	Behavioral & developmental disorders	62	0.3967	22.5	18.8
887	887	Other mental disorder diagnoses	0	0.4806	19.3	16.1
894	894	Alcohol/drug abuse or dependence, left ama	1	0.6453	21.6	18.0
895	895	Alcohol/drug abuse or dependence w rehabilitation therapy	1	0.4806	19.3	16.1
896	896	Alcohol/drug abuse or dependence w/o rehabilitation therapy w MCC	16	0.7541	23.8	19.8
897	896	Alcohol/drug abuse or dependence w/o rehabilitation therapy w/o MCC	11	0.4806	19.3	16.1
901	901	Wound debridements for injuries w MCC	216	1.3007	34.0	28.3
902	901	Wound debridements for injuries w CC	143	1.1738	32.7	27.3
903	901	Wound debridements for injuries w/o CC/MCC	14	0.7541	23.8	19.8
904	904	Skin grafts for injuries w CC/MCC	77	1.4033	39.5	32.9

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
905	904	Skin grafts for injuries w/o CC/MCC	4	0.7541	23.8	19.8
906	906	Hand procedures for injuries	2	0.7541	23.8	19.8
907	907	Other O.R. procedures for injuries w MCC	127	1.6745	38.1	31.8
908	907	Other O.R. procedures for injuries w CC	76	1.1842	33.7	28.1
909	907	Other O.R. procedures for injuries w/o CC/MCC	2	1.0755	27.0	22.5
913	913	Traumatic injury w MCC	65	0.8225	24.3	20.3
914	913	Traumatic injury w/o MCC	64	0.5835	21.7	18.1
915	915	Allergic reactions w MCC	0	0.4806	19.3	16.1
916	915	Allergic reactions w/o MCC	0	0.4806	19.3	16.1
917	917	Poisoning & toxic effects of drugs w MCC	15	1.0755	27.0	22.5
918	917	Poisoning & toxic effects of drugs w/o MCC	9	0.4806	19.3	16.1
919	919	Complications of treatment w MCC	1,400	1.1020	26.6	22.2
920	919	Complications of treatment w CC	908	0.7861	25.0	20.8
921	919	Complications of treatment w/o CC/MCC	82	0.6137	20.3	16.9
922	922	Other injury, poisoning & toxic effect diag w MCC	2	1.0755	27.0	22.5
923	922	Other injury, poisoning & toxic effect diag w/o MCC	2	1.0755	27.0	22.5
927	927	Extensive burns or full thickness burns w MV 96+ hrs w skin graft	1	1.0755	27.0	22.5
928	928	Full thickness burn w skin graft or inhal inj w CC/MCC	9	1.0755	27.0	22.5
929	928	Full thickness burn w skin graft or inhal inj w/o CC/MCC	0	0.8244	26.6	22.2
933	933	Extensive burns or full thickness burns w MV 96+ hrs w/o skin graft	7	1.0755	27.0	22.5
934	934	Full thickness burn w/o skin grft or inhal inj	36	0.8244	26.6	22.2
935	935	Non-extensive burns	40	0.9376	25.6	21.3
939	939	O.R. proc w diagnoses of other contact w health services w MCC	238	1.4023	34.2	28.5
940	939	O.R. proc w diagnoses of other contact w health services w CC	101	1.0029	32.4	27.0
941	939	O.R. proc w diagnoses of other contact w health services w/o CC/MCC	13	0.7541	23.8	19.8
945	945	Rehabilitation w CC/MCC	2,101	0.6424	21.8	18.2
946	945	Rehabilitation w/o CC/MCC	197	0.4199	18.5	15.4
947	947	Signs & symptoms w MCC	52	0.7660	22.9	19.1
948	947	Signs & symptoms w/o MCC	53	0.5069	19.9	16.6
949	949	Aftercare w CC/MCC	3,430	0.6846	22.2	18.5
950	949	Aftercare w/o CC/MCC	264	0.4418	17.0	14.2
951	951	Other factors influencing health status	74	1.4928	32.2	26.8
955	955	Craniotomy for multiple significant trauma	0	0.4806	19.3	16.1
956	956	Limb reattachment, hip & femur proc for multiple significant trauma	0	1.6485	37.2	31.0
957	957	Other O.R. procedures for multiple significant trauma w MCC	3	1.6485	37.2	31.0

MS-LTC-DRG	Base MS-LTC-DRG	MS-LTC-DRG Title	FY 2008 LTCH Cases	Proposed Relative Weight	Proposed Geometric Average Length of Stay	Proposed Short-Stay Outlier (SSO) Threshold[1]
958	957	Other O.R. procedures for multiple significant trauma w CC	2	1.0755	27.0	22.5
959	957	Other O.R. procedures for multiple significant trauma w/o CC/MCC	0	1.0755	27.0	22.5
963	963	Other multiple significant trauma w MCC	17	1.0755	27.0	22.5
964	963	Other multiple significant trauma w CC	6	0.4806	19.3	16.1
965	963	Other multiple significant trauma w/o CC/MCC	2	0.4806	19.3	16.1
969	969	HIV w extensive O.R. procedure w MCC	19	1.6485	37.2	31.0
970	969	HIV w extensive O.R. procedure w/o MCC	3	1.6485	37.2	31.0
974	974	HIV w major related condition w MCC	218	1.0251	22.5	18.8
975	974	HIV w major related condition w CC	67	0.7645	20.0	16.7
976	974	HIV w major related condition w/o CC/MCC	8	0.6453	21.6	18.0
977	977	HIV w or w/o other related condition	54	0.6015	19.3	16.1
981	981	Extensive O.R. procedure unrelated to principal diagnosis w MCC	1,140	2.2994	42.4	35.3
982	981	Extensive O.R. procedure unrelated to principal diagnosis w CC	313	1.3292	34.1	28.4
983	981	Extensive O.R. procedure unrelated to principal diagnosis w/o CC/MCC	15	1.0755	27.0	22.5
984	984	Prostatic O.R. procedure unrelated to principal diagnosis w MCC	13	1.6485	37.2	31.0
985	984	Prostatic O.R. procedure unrelated to principal diagnosis w CC	5	1.6485	37.2	31.0
986	984	Prostatic O.R. procedure unrelated to principal diagnosis w/o CC/MCC	1	0.6453	21.6	18.0
987	987	Non-extensive O.R. proc unrelated to principal diagnosis w MCC	434	1.7369	37.5	31.3
988	987	Non-extensive O.R. proc unrelated to principal diagnosis w CC	185	1.0852	31.6	26.3
989	987	Non-extensive O.R. proc unrelated to principal diagnosis w/o CC/MCC	8	1.0852	31.6	26.3
998	998	Principal diagnosis invalid as discharge diagnosis	0	0	0.0	0.0
999	999	Ungroupable	0	0	0.0	0.0

[1] The SSO Threshold is calculated as 5/6th of the geometric average length of stay of the MS-LTC-DRG (as specified in §412.529(a) in conjunction with §412.503).

* In determining the proposed MS-LTC-DRG relative weights for RY 2010, these MS-LTC-DRGs were adjusted for nonmonotonicity as discussed in section VIII.B.3.f. (step 6) of the preamble of the FY 2010 IPPS and RY 2010 LTCH PPS proposed rule (74 FR 24079).

[FR Doc. E9–12907 Filed 5–29–09; 4:15 pm]
BILLING CODE C

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1056]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before September 1, 2009.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1056, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Glenn County, California, and Incorporated Areas				
Butte Creek	Approximately 2,270 feet downstream of Aguas Frias Road.	None	+105	Unincorporated Areas of Glenn County.
	Just upstream of Aguas Frias Road	None	+108	
Butte Creek (*outside of Levee*).	Approximately 3,230 feet downstream of Aguas Frias Road.	None	+97	Unincorporated Areas of Glenn County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Just upstream of Aguas Frias Road	None	+97	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Glenn County

Maps are available for inspection at 777 North Colusa Street, Willows, CA 95988.

San Luis Obispo County, California, and Incorporated Areas

Santa Maria River	Approximately 0.9 mile downstream of Cabrillo Highway.	None	+70	Unincorporated Areas of San Luis Obispo County.
	At the confluence with the Cuyama River	None	+355	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of San Luis Obispo County

Maps are available for inspection at the San Luis Obispo County Government Center, 976 Osos Street, Room 207, San Luis Obispo, CA 93401.

Santa Barbara County, California, and Incorporated Areas

Santa Maria River	Approximately 400 feet upstream of Pioneer Street	None	+70	City of Guadalupe, City of Santa Maria, Unincorporated Areas of Santa Barbara County.
	Approximately 450 feet downstream of Santa Maria Mesa Road.	None	+367	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Guadalupe

Maps are available for inspection at Guadalupe City Hall, 918 Obispo Street, Guadalupe, CA 93434.

City of Santa Maria

Maps are available for inspection at City of Santa Maria Public Works Department, 110 South Pine Street, Santa Maria, CA 93458.

Unincorporated Areas of Santa Barbara County

Maps are available for inspection at Santa Barbara County Public Works Department, Water Resources Division, 123 East Anapamu Street, Santa Barbara, CA 93101.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Henderson County, Illinois, and Incorporated Areas				
Mississippi River	Just downstream of Main Street in Lomax, IL extended (approximately 395 miles upstream of the confluence with the Ohio River).	+530	+531	Unincorporated Areas of Henderson County, Village of Gulfport, Village of Lomax.
	Approximately 400 feet upstream of 1100N extended (approximately 403 miles upstream of the confluence with the Ohio River).	+533	+534	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Henderson County

Maps are available for inspection at the Henderson County Courthouse, 307 Warren Street, Oquawka, IL 61469.

Village of Gulfport

Maps are available for inspection at the Henderson County Courthouse, 307 Warren Street, Oquawka, IL 61469.

Village of Lomax

Maps are available for inspection at the Lomax Village Hall, 861 Atchison Avenue, Lomax, IL 61454.

Greene County, Missouri, and Incorporated Areas				
Galloway Creek	Just downstream of US Highway 60 Access Ramp	+1155	+1154	City of Springfield.
	Just upstream of East Seminole Street	None	+1301	
Jordan Creek	Just downstream of West Bennett Street	+1222	+1223	City of Springfield.
	Just upstream of North Washington Avenue	+1274	+1277	
Mount Pleasant Branch	Approximately 65 feet upstream from Highway 160	+1183	+1186	City of Willard.
North Branch Jordan Creek	Just downstream of East Brower Street	+1282	+1281	City of Springfield.
	Just upstream of North Yates Avenue	None	+1356	
North Fork Mount Pleasant Branch.	Just downstream of Highway 160	+1152	+1157	City of Willard.
	Just upstream of Highway 160	+1153	+1160	
South Branch Jordan Creek	Just downstream of North Sherman Avenue	+1276	+1283	City of Springfield.
	Just upstream of North Patterson Avenue	+1329	+1330	
South Creek	Just downstream of US Highway 160/County Highway FF.	+1159	+1162	City of Springfield, Unincorporated Areas of Greene County.
	Just upstream of South Kickapoo Avenue	+1305	+1307	
Ward Branch	Just downstream of South Farm Road 139/County Road 139.	+1113	+1114	City of Springfield, Unincorporated Areas of Greene County.
	Just upstream of East Independence Street	None	+1251	
Yarbrough Creek	Just downstream of West Lakewood Street	None	+1187	City of Springfield, Unincorporated Areas of Greene County.
	Just upstream of South Campbell Avenue/Highway 100.	+1233	+1212	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
ADDRESSES				
City of Springfield				
Maps are available for inspection at 840 Boonville Avenue, Springfield, MO 65801.				
City of Willard				
Maps are available for inspection at 224 West Jackson Street, Willard, MO 65781.				
Unincorporated Areas of Greene County				
Maps are available for inspection at 940 Boonville Avenue, Springfield, MO 65802.				
Trempealeau County, Wisconsin, and Incorporated Areas				
Beaver Creek	Approximately 330 feet downstream of State Highway 93.	None	+680	Unincorporated Areas of Trempealeau County.
	Approximately 400 feet upstream of State Highway 93	None	+685	
Buffalo River	Approximately 575 feet upstream of Chimney Rock Road.	None	+855	City of Osseo, Unincorporated Areas of Trempealeau County, Village of Eleva, Village of Strum.
	Approximately 4,200 feet upstream of County Highway R.	None	+991	
Lake Marinuka (Beaver Creek).	Approximately 1,950 feet upstream of Main Street	None	+702	Unincorporated Areas of Trempealeau County.
	Approximately 3,400 feet upstream of Main Street	None	+702	
Mississippi River	At the corporate limits of Trempealeau County with LaCrosse County.	None	+651	Village of Trempealeau, Unincorporated Areas of Trempealeau County.
	At the corporate limits of Trempealeau County with Buffalo County.	+658	+659	Unincorporated Areas of Trempealeau County.
North Fork Beaver Creek	Approximately 1,500 feet downstream of Bridge Street.	None	+765	Unincorporated Areas of Trempealeau County.
	Approximately 1,330 feet downstream of Bridge Street.	None	+766	
Rod and Gun Club Tributary	Approximately 560 feet downstream of the confluence with Trempealeau River.	None	+950	City of Osseo.
	Just downstream of 5th Street	None	+951	
South Fork Beaver Creek	Approximately 1,860 feet downstream of South Main Street.	None	+765	Unincorporated Areas of Trempealeau County.
	Approximately 420 feet upstream of South Main Street.	None	+767	
South Fork Buffalo River	Approximately 700 feet downstream of County Highway B.	None	+961	Unincorporated Areas of Trempealeau County.
	Approximately 625 feet downstream of County Highway B.	None	+961	
Trempealeau River	Approximately 3.1 miles downstream of West Main Street.	None	+717	Unincorporated Areas of Trempealeau County, City of Arcadia, City of Blair, City of Independence, City of Whitehall.
	Approximately 4.15 miles upstream of Spring Street	None	+861	
Turton Creek	Approximately 100 feet upstream of Main Street	+729	+730	City of Arcadia.
	Approximately 1,175 feet downstream of Oak Street	+733	+734	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Arcadia

Maps are available for inspection at City Hall, 203 West Main Street, Arcadia, WI 54612.

City of Blair

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Maps are available for inspection at City Hall, 122 South Urberg Avenue, Blair, WI 54616.

City of Independence

Maps are available for inspection at City Hall, 23688 Adams Street, Independence, WI 54747.

City of Osseo

Maps are available for inspection at City Hall, 13712 Eighth Street, Osseo, WI 54758.

City of Whitehall

Maps are available for inspection at City Hall, 18620 Hobson Street, Whitehall, WI 54773.

Unincorporated Areas of Trempealeau County

Maps are available for inspection at the Trempealeau County Courthouse, 36245 Main Street, Whitehall, WI 54773.

Village of Eleva

Maps are available for inspection at the Village Hall, 25952 East Mondovi Street, Eleva, WI 54738.

Village of Strum

Maps are available for inspection at the Village Hall, 202 South 5th Avenue, Strum, WI 54770.

Village of Trempealeau

Maps are available for inspection at the Village Hall, 24455 3rd Street, Trempealeau, WI 54661.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: May 22, 2009.

Deborah S. Ingram,

Acting Deputy Assistant Administrator for Mitigation, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E9–12848 Filed 6–2–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1050]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before September 1, 2009.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1050, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
City of Greenwood, Wisconsin					
Wisconsin	City of Greenwood	Black River	Approximately 4,460 feet downstream of County Highway G.	None	+ 1113
			Approximately 4,960 feet upstream of County Highway G.	None	+ 1126

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Greenwood
Maps are available for inspection at City Hall, 102 North Main Street, Greenwood, WI 54437.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Arapahoe County, Colorado, and Incorporated Areas				
Bear Gulch	Approximately 1 mile upstream of East 72nd Avenue	None	+ 5355	Unincorporated Areas of Arapahoe County.
	Approximately 2.1 miles upstream 56th Avenue alignment.	None	+ 5482	
Bear Gulch Tributary	At the confluence with Bear Gulch	None	+ 5402	Unincorporated Areas of Arapahoe County.
	Approximately 900 feet upstream of the confluence with Bear Gulch.	None	+ 5408	
Blackmer Gulch	Approximately 200 feet upstream of South Monroe Lane.	+ 5417	+ 5418	City of Cherry Hills Village.
	Just upstream of the High Line Canal	+ 5492	+ 5491	
Box Elder Creek	Approximately 1,400 feet upstream of 72nd Avenue	None	+ 5367	City of Aurora, Unincorporated Areas of Arapahoe County.
	Approximately 0.5 miles downstream of Yale Avenue	None	+ 5691	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Cherry Creek	Approximately 0.92 miles downstream of Arapahoe Road.	+5623	+5624	City of Aurora, City of Centennial, Unincorporated Areas of Arapahoe County.
	Approximately 1.70 miles upstream of East Broncos Parkway.	+5713	+5713	
Coyote Run	At the confluence with Box Elder Creek	None	+5393	City of Aurora, Unincorporated Areas of Arapahoe County.
	Approximately 3.80 miles upstream of East Alameda Avenue.	None	+5814	
Goldsmith Gulch	Just upstream of East Belleview Avenue	+5591	+5590	Unincorporated Areas of Arapahoe County, City of Centennial, City of Greenwood Village.
	Approximately 100 feet downstream of East Arapahoe Road.	None	+5773	
Goldsmith Gulch West Tributary.	Approximately 400 feet upstream of the confluence with Goldsmith Gulch.	+5640	+5641	Unincorporated Areas of Arapahoe County, City of Greenwood Village.
	Approximately 100 feet downstream of East Peakview Avenue.	+5735	+5738	
Greenwood Gulch	Just upstream of Clarkson Street	+5344	+5344	City of Centennial, City of Cherry Hills Village, City of Greenwood Village.
	Just upstream of Holly Street	+5525	+5525	
Little Dry Creek	Just upstream of Clarkson Street	+5344	+5339	Unincorporated Areas of Arapahoe County, City of Centennial, City of Cherry Hills Village, City of Greenwood Village.
	Just downstream of South Quebec Street	+5619	+5618	
Murphy Creek	Just downstream of East Alameda Avenue	+5523	+5523	City of Aurora, Unincorporated Areas of Arapahoe County.
	Approximately 1,700 feet downstream of East Wheatlands Parkway.	None	+6011	
Prentice Gulch	At the confluence with Greenwood Gulch	+5407	+5405	City of Greenwood Village.
	Just upstream of Holly Street	+5525	+5525	
Quincy Gulch	At the confluence with Blackmer Gulch	+5414	+5414	City of Cherry Hills Village.
	Approximately 300 feet upstream of the High Line Canal.	+5494	+5494	
SJCD 6200	At the confluence with South Platte River	None	+5360	Unincorporated Areas of Arapahoe County, City of Littleton.
	Approximately 400 feet downstream of South Platte Canyon Road.	None	+5404	
Willow Creek	At the confluence with Little Dry Creek	+5537	+5536	Unincorporated Areas of Arapahoe County.
	Just downstream of Englewood Dam outlet structure	+5558	+5559	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Aurora

Maps are available for inspection at 15151 East Alameda Parkway, 3rd Floor, Aurora, CO 80012.

City of Centennial

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Maps are available for inspection at the Arapahoe County Department of Public Works and Development, 10730 West Briarwood Avenue, Centennial, CO 80112.

City of Cherry Hills Village

Maps are available for inspection at 2450 East Quincy Avenue, Cherry Hills Village, CO 80113.

City of Greenwood Village

Maps are available for inspection at 6060 South Quebec Street, Greenwood Village, CO 80111.

City of Littleton

Maps are available for inspection at 2255 West Berry Avenue, Littleton, CO 80165.

Unincorporated Areas of Arapahoe County

Maps are available for inspection at the Arapahoe County Department of Public Works and Development, 10730 East Briarwood Avenue, Centennial, CO 80112.

Fergus County, Montana, and Incorporated Areas

Flood Channel	Approximately 70 feet upstream of Main Street Bridge	+3609	+3610	Town of Denton.
	Approximately 50 feet upstream of Railroad Bridge	+3610	+3614	
Shallow Flooding	Intersection of Bain Street and Main Street	None	#1	Town of Denton.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Denton

Maps are available for inspection at 305 West Watson Street, Lewistown, MT 59457.

Tuscarawas County, Ohio, and Incorporated Areas

Beggar Run (Backwater from Tuscarawas River).	At the confluence of Beggar Run with Conotton Creek	None	+909	Unincorporated Areas of Tuscarawas County.
	Approximately 0.78 mile upstream of the confluence of Beggar Run with Conotton Creek.	None	+909	
Browns Run (Backwater from Tuscarawas River).	At the confluence of Browns Run with Conotton Creek.	None	+909	Unincorporated Areas of Tuscarawas County.
	Just downstream of Henderson School Road	None	+909	
Conotton Creek (Backwater from Tuscarawas River).	At the confluence of Conotton Creek and Tuscarawas River.	None	+909	Unincorporated Areas of Tuscarawas County.
	Approximately 0.76 mile upstream of Miller Hill Road (Tuscarawas/Carroll County boundary).	None	+909	
Dog Run (Backwater from Tuscarawas River).	At the confluence of Dog Run and Conotton Creek	None	+909	Unincorporated Areas of Tuscarawas County.
	Approximately 0.42 mile upstream of Norfolk and Western Railway.	None	+909	
Huff Run (Backwater from Tuscarawas River).	At the confluence of Huff Run with Conotton Creek	None	+909	Unincorporated Areas of Tuscarawas County, Village of Mineral City.
	Approximately 1.38 miles upstream of New Cumberland Road.	None	+909	
Indian Fork (Backwater from Tuscarawas River).	At the confluence of Indian Fork with Conotton Creek	None	+909	Unincorporated Areas of Tuscarawas County.
	Just downstream of State Route 212	None	+909	
Middle Run (Backwater from Tuscarawas River).	At the confluence of Middle Run with Tuscarawas River.	None	+909	Unincorporated Areas of Tuscarawas County.
	Approximately 0.72 mile upstream of Dover Zoar Road.	None	+909	
Small Middle Run (Backwater from Tuscarawas River).	At the confluence of Small Middle Run with Tuscarawas River.	None	+909	Unincorporated Areas of Tuscarawas County.
	Approximately 500 feet downstream of Dover Zoar Road.	None	+909	
Stillwater Creek	Just downstream of the Baltimore and Ohio Railroad	None	+844	City of Midvale.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 0.45 mile upstream of US Route 250 ..	None	+845	
Tuscarawas River	Just upstream of the Dover Dam	None	+909	Village of Bolivar, Unincorporated Areas of Tuscarawas County, Village of Zoar.
	Approximately 2.18 miles upstream of State Route 212 (Tuscarawas/Stark County boundary).	None	+909	
Tuscarawas River	Approximately 0.66 mile downstream of Tuscarawas Road.	None	+838	Village of Tuscarawas.
Tuscarawas River	Approximately 1,000 feet upstream of the confluence of Tuscarawas River with Clewell Run.	None	+831	Village of Gnadenhutten.
Wolf Run (Backwater from Tuscarawas River).	At the confluence of Wolf Run and Tuscarawas River	None	+909	Unincorporated Areas of Tuscarawas County.
	Approximately 0.89 mile upstream of Norfolk and Western Railway.	None	+909	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Midvale
Maps are available for inspection at City Hall, 311 Barnhill Road, Midvale, OH 44653.

Unincorporated Areas of Tuscarawas County
Maps are available for inspection at the Tuscarawas County Administrative Offices, 125 East High Avenue, New Philadelphia, OH 44663.

Village of Bolivar
Maps are available for inspection at the Bolivar Village Hall, 109 Canal Street Northwest, Bolivar, OH 44612.

Village of Gnadenhutten
Maps are available for inspection at the Gnadenhutten Village Hall, 131 South Walnut Street, Gnadenhutten, OH 44629.

Village of Mineral City
Maps are available for inspection at the Mineral City Village Hall, 8728 North High Street, Mineral City, OH 44656.

Village of Tuscarawas
Maps are available for inspection at the Tuscarawas Village Hall, 522 East Cherry Street, Tuscarawas, OH 44682.

Village of Zoar
Maps are available for inspection at the County Administrative Offices, 125 East High Avenue, New Philadelphia, OH 44663.

Yankton County, South Dakota, and Incorporated Areas

James River	Just upstream of the confluence with the Missouri River.	None	+1167	Unincorporated Areas of Yankton County.
	Approximately 600 feet upstream of County Highway 213 (431st Avenue).	None	+1188	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Yankton County
Maps are available for inspection at 321 West 3rd Street, Yankton, SD 57078.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Angelina County, Texas, and Incorporated Areas				
Biloxi Creek North Tributary	Approximately 0.6 miles downstream of Loop 287	None	+306	City of Lufkin.
	Just upstream of Loop 287	None	+329	
Cedar Creek	Just downstream of Lotus Lane	None	+278	City of Lufkin.
	Just upstream of State Loop 339	None	+299	
Cedar Creek North Tributary	Just upstream of Lotus Lane	None	+280	City of Lufkin.
	Approximately 1,070 feet upstream of Texas Southeastern Rail Road.	None	+286	
Cedar Creek South Tributary	Confluence of Cedar Creek and Cedar Creek South Tributary.	+254	+253	City of Lufkin.
	Approximately 1,300 feet upstream of Berry Road	None	+287	
Cedar Creek Tributary 3	Confluence of Cedar Creek Tributary 3 and Cedar Creek.	None	+239	City of Lufkin.
	Just upstream of Live Oak Lane	None	+266	
East Fork of West Branch Mill Creek.	Confluence of; East Fork of West Branch Mill Creek and Tributary to Mill Creek Tributary.	+283	+279	City of Lufkin.
	Just downstream of US Highway 69	None	+300	
Hurricane Creek	Approximately 0.7 miles downstream of College Drive	None	+232	City of Lufkin.
	Just downstream of the intersection of Conn Avenue and Chestnut Street.	+279	+280	
Hurricane Creek East Tributary (E).	Approximately 0.6 miles upstream of Brentwood Drive	None	+269	City of Lufkin.
	Confluence of Hurricane Creek and Hurricane Creek East Tributary (E).	None	+273	
Hurricane Creek East Tributary (E) Tributary	Confluence of Hurricane Creek East Tributary (E) Tributary and Hurricane Creek East Tributary (E).	+246	+250	City of Lufkin.
	Approximately 0.5 miles upstream of Brentwood Drive	None	+267	
Hurricane Creek East Tributary (North).	Just downstream of Jones Street	None	+289	City of Lufkin.
	Just upstream of Whipporwill Street	None	+305	
Hurricane Creek East Tributary (South).	Confluence of Hurricane Creek East Tributary (South) and Unnamed Tributary 4 to Hurricane Creek.	None	+237	City of Lufkin.
	Just upstream of Pine Valley Drive	None	+265	
Hurricane Creek West Branch.	Confluence of Hurricane Creek and Hurricane Creek West Branch.	+251	+250	City of Lufkin.
	Just upstream of Park Lane	None	+276	
Mill Creek Tributary	Approximately 1,486 feet downstream of Bonita Street	None	+290	City of Lufkin.
	Approximately 230 feet upstream of Martin Luther King Drive.	None	+304	
One Eyed Creek	Just downstream of Westwood Place	None	+289	City of Lufkin.
	Just downstream of Fuller Springs Drive	None	+309	
Shirley Creek	Just upstream of Loop 287	+259	+262	City of Lufkin.
	Just upstream of Trenton Road	None	+297	
Shirley Creek Tributary 2	Just downstream of Loop 287	None	+294	City of Lufkin.
	Just downstream of Shady Pine Road	None	+310	
Shirley Creek Tributary 2 East Branch.	Confluence of Shirley Creek Tributary 2 and Shirley Creek Tributary 2 East Branch.	None	+277	City of Lufkin.
	Approximately 600 feet upstream of Freeman Street	None	+296	
Tributary to Mill Creek Tributary.	Just downstream of the City Lake Dam	+271	+272	City of Lufkin.
	Just downstream of US Highway 69	None	+305	
Tributary to Paper Mill Creek Tributary.	Just downstream of State Highway 103	None	+272	City of Lufkin.
	Approximately 675 feet upstream of Freeman Street	None	+290	
Unnamed Tributary 1 to Hurricane Creek.	Confluence of Hurricane Creek and Unnamed Tributary 1 to Hurricane Creek.	+255	+259	City of Lufkin.
	Just upstream of Farm-to-Market Road 58	None	+293	
Unnamed Tributary 2 to Hurricane Creek.	Confluence of Hurricane Creek and Unnamed Tributary 2 to Hurricane Creek.	None	+247	City of Lufkin.
	Approximately .4 miles upstream from Tulane Road	None	+273	
Unnamed Tributary 3 to Hurricane Creek.	Confluence of Hurricane Creek and Unnamed Tributary 3 to Hurricane Creek.	None	+236	City of Lufkin.
	Just upstream of Loop 287	None	+264	
Unnamed Tributary 4 to Hurricane Creek.	Confluence of Unnamed Tributary 4 to Hurricane Creek and Hurricane Creek East Tributary (South).	None	+237	City of Lufkin.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Unnamed Tributary to Papermill Creek.	Approximately 773 feet upstream of Crown Colony Drive.	None	+272	City of Lufkin.
	Limit of detailed study nearest to Kit McConnico Park	None	+244	
	Lower limit of detailed study (no physical reference available).	None	+252	
	Approximately 0.6 miles downstream of Moffett Road	None	+252	
	Approximately 0.5 miles downstream of Moffett Road	None	+252	
	Approximately 1,800 feet downstream of Old Moffett Road.	None	+254	
	Just upstream of State Loop 287	+259	+261	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Lufkin

Maps are available for inspection at 300 East Shepard Avenue, Lufkin, TX 75901.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: May 21, 2009.

Deborah S. Ingram,

Acting Deputy Assistant Administrator for Mitigation, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E9–12847 Filed 6–2–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 12, 39, and 52

[FAR Case 2008–019; Docket 2009–0018; Sequence 1]

RIN: 9000–AL11

Federal Acquisition Regulation; FAR Case 2008–019, Authentic Information Technology Products

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Advanced Notice of Proposed Rulemaking; notice of public meetings.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are hosting six public meetings to continue a dialogue with industry and Government agencies about ways to develop greater assurances regarding the authenticity of information technology (IT) products acquired by the Government. The public meetings will include dialogues on the impact of counterfeit IT products on matters of performance and security; contractor liability and consequential damages; competitiveness issues associated with procuring IT products from the original equipment manufacturer or authorized distributor; identifying viable means of authenticating IT products; and contractor supply chain risk management requirements as an evaluation factor in the procurement of IT products.

DATES: See Supplementary Information section for public meeting dates.

ADDRESSES: See Supplementary Information section for public meeting addresses.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR case 2008–019.

SUPPLEMENTARY INFORMATION:

A. Public Meeting Dates

1. June 23, 2009, 9 a.m. to 3 p.m., EST.
2. July 15, 2009, 9 a.m. to 3 p.m., EST.
3. July 22, 2009, 9 a.m. to 3 p.m., EST.
4. July 29, 2009, 9 a.m. to 3 p.m., EST.
5. August 5, 2009, 9 a.m. to 3 p.m., EST.
6. August 12, 2009, 9 a.m. to 3 p.m., EST.

B. Public Meeting Addresses

1. The meetings for June 23 and July 15 will be conducted at General Services Administration (GSA), 1800 F Street, NW, Washington, DC 20405, in the GSA Auditorium.

2. The subsequent meetings, July 22, July 29, August 5, and August 12 will be conducted at General Services Administration (GSA), 1800 F Street, NW, Washington, DC 20405, in Room 5141B.

Interested parties are encouraged to arrive at least 30 minutes early to accommodate security procedures.

If you wish to make a presentation on any of the topics, please contact and

submit a copy of your presentation 5 days prior to the meeting date, to General Services Administration, Contract Policy Division (VPC), 1800 F Street, NW, Room 4040, Attn: Ernest Woodson, Washington, DC 20405. Telephone: (202) 501–3775.

Submit electronic materials via e-mail to *ernest.woodson@gsa.gov*. Please submit presentations only and cite Public Meeting Authentic IT Products Continued Dialogue, in all correspondence related to the public meetings. The submitted presentations will be the only record of the public meeting. After the July 15, 2009 meeting, all subsequent meetings are subject to be cancelled. For that reason, all interested parties should contact Ernest Woodson after July 15, 2009, to verify that subsequent meetings are being held.

Special Accommodations: The public meetings are physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Ernest Woodson at (202) 501–3775, at least 5–working days prior to the meeting date.

C. Background

On December 11, 2008, the Councils conducted a public meeting, (see **Federal Register** notice at 73 FR 68373 on November 18, 2008) to seek comments from both Government and industry, on among other things, whether the Federal Acquisition Regulation (FAR) should be revised to include a requirement that contractors selling information technology (IT) products (including computer hardware and software) represent that such products are authentic. The Councils were interested in comments regarding contractor liability if IT products sold to the Government by contractor are not authentic, and whether contractors who are resellers or distributors of computer hardware and software should represent to the Government that they are authorized by the original equipment manufacturer (OEM) to sell the IT products to the Government. The Councils also sought comments on (1) whether the measures contemplated above should be extended to other items purchased by the Government; and (2) whether the rule should apply when IT is a component of a system or assembled product.

The public meetings contemplated by this notice will continue a dialogue with industry and Government agencies on the impact of counterfeit IT products on matters of performance and security; contractor liability and consequential damages; competitiveness issues associated with procuring IT products from the original equipment manufacturer or authorized distributor; identifying viable means of authenticating IT products; and contractor supply chain risk management requirements as an evaluation factor in the procurement of IT products. The meetings are intended to provide for an exchange of information and ideas that may be used to assist in developing greater assurance around IT products acquired by the Government.

List of Subjects in 48 CFR Parts 2, 4, 12, 39, and 52

Government procurement.

Dated: May 29, 2009

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–12927 Filed 6–2–09; 8:45 am]

BILLING CODE 6820–EP–S

Notices

Federal Register

Vol. 74, No. 105

Wednesday, June 3, 2009

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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0059]

ArborGen, LLC; Availability of an Environmental Assessment for Controlled Release of a Genetically Engineered Eucalyptus Hybrid

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment for a proposed controlled field release of a genetically engineered clone of a *Eucalyptus* hybrid. The purpose of this release is to continue research on the effectiveness of gene constructs which are intended to confer cold tolerance; to test the efficacy of a gene introduced to alter lignin biosynthesis; and to test the efficacy of a gene designed to alter fertility. We are making the environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before July 6, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0059* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0059, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0059.

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

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

FOR FURTHER INFORMATION CONTACT: Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–7324. To obtain copies of the environmental assessment, contact Ms. Cynthia Eck at (301) 734–0667; e-mail: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release in the environment of a regulated article.

On January 11, 2008, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS No. 08–011–106rm) from ArborGen, LLC, in Summerville, SC, for a controlled field release of genetically engineered *Eucalyptus* hybrids in 19 locations. On January 14, 2008, APHIS received a second permit application (APHIS No. 08–014–101rm) from ArborGen for another controlled release of genetically engineered *Eucalyptus* hybrids in 10 additional locations. Under these permits for a total of 29 sites, trees planted under previously approved permits (APHIS Nos. 06–325–111r, 08–039–102rm, and 08–151–101r) would be allowed to flower.

Permit applications 08–11–106rm and 08–014–101rm describe *Eucalyptus* trees derived from a hybrid of *Eucalyptus grandis* X *Eucalyptus urophylla.* The purpose of the field tests is to assess the effectiveness of gene constructs which are intended to confer cold tolerance; to test the efficacy of a gene introduced to alter lignin biosynthesis; and to test the efficacy of a gene designed to alter fertility. In addition, the trees have been engineered with the kanamycin resistance selectable marker gene (*nptII*). These DNA sequences were introduced into *Eucalyptus* trees using disarmed *Agrobacterium tumefaciens.*

The subject *Eucalyptus* trees are considered regulated articles under the regulations in 7 CFR part 340 because they were created using donor sequences from plant pests.

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts and plant pest risks associated with the proposed release under permit of these transgenic *Eucalyptus* trees, APHIS has prepared an environmental assessment (EA). The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The EA may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this notice.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 28th day of May 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–12928 Filed 6–2–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kootenai National Forest, Lincoln County, MT; Flower Creek Project

AGENCY: Forest Service, USDA.

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

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of fuel and vegetation management through commercial timber harvest, precommercial thinning and fuel grinding; road storage; temporary road construction; and trail construction. The project is located in the Flower Creek Watershed on the Libby Ranger District, Kootenai National Forest, Lincoln County, Montana, and south of Libby, Montana.

DATES: Comments concerning the scope of the analysis must be received by 45 days from the date of publication in the **Federal Register**. The draft environmental impact statement is expected December 2009 and the final environmental impact statement is expected March 2010.

ADDRESSES: Send written comments to Malcolm R. Edwards, District Ranger, Libby Ranger District, 12557 Hwy 37, Libby, MT 59923. Comments may also be sent via e-mail to *comments-northern-kootenai-libby@fs.fed.us.*

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative review or judicial review.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review.

FOR FURTHER INFORMATION CONTACT: Denise Beck, Team Leader, Libby Ranger District, 12557 Hwy 37, Libby, MT 59923; phone: (406) 293–7773.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The project area is approximately 3 air miles south of Libby, Montana, within all or portions of T30N, R31W, Sections 3, 4, 5, 15, 16, 17, 18, 19, 20, 21, 28, 29 and 30; T30N, R32W, Sections 3, 14, 15, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35 and 36 PMM, Lincoln County, Montana. The area contains the Flower Creek Watershed.

Purpose and Need for Action

The purpose and need for this project is to: (1) Trend vegetation in the Flower Creek Watershed towards conditions that are resilient to fire thereby reducing the risk of stand replacing wildfire and associated post-fire effects to the municipal watershed.

Proposed Action

To meet this purpose and need this project proposes:

(1) Vegetation treatments, including commercial timber harvest and associated fuel reduction, fuel reduction in stands that are not economically viable for commercial harvest, pre-commercial thinning, yarding tops to the landing in commercial harvest units, grinding landing piles and spot fuel grinding or mastication with and without associated timber harvest. Vegetation treatments total 990 acres of treated area.

(2) Access management includes road storage and construction of temporary road. Approximately 1.81 miles of road storage is proposed. Approximately 1 mile of temporary road construction to access treatment units is proposed.

(3) Construction of a non-system trail tread to form a walking loop in the project area for a total of 0.23 miles.

Possible Alternatives

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative in which none of the proposed activities will be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

Responsible Official

Forest Supervisor of the Kootenai National Forest, 31374 U.S. Highway 2 West, Libby, MT 59923. As the Responsible Official, I will decide if the proposed project will be implemented. I will document the decision and reasons for the decision in the Record of Decision. I have delegated the responsibility for preparing the DEIS and FEIS to Malcolm R. Edwards, District Ranger, Libby Ranger District.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. A public meeting will be held June 16 in Libby, Montana followed by a public field trip on June 18.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Dated: May 21, 2009.

Paul Bradford,

Forest Supervisor, Kootenai National Forest.

[FR Doc. E9–12724 Filed 6–2–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Gulf of Mexico Electronic Logbook.

Form Number(s): None.

OMB Approval Number: 0648–0543.

Type of Request: Regular submission.

Burden Hours: 300.

Number of Respondents: 500.

Average Hours per Response: 30 minutes for the initial installation and 1 minute × 6 for the removal/reinstallation of the electronic logbook (ELB).

Needs and Uses: There are currently approximately 1,932 permitted vessels that harvest shrimp from the Exclusive Economic Zone, and the Gulf of Mexico (GOM) Fishery Management Council (Council) estimates that there are over 13,000 boats that fish in state waters. With such a large number of vessels of differing sizes, gears used, and fishing capabilities compounded by seasonal variability in abundance and price and the broad geographic distribution of the fleet, it is practically impossible to estimate the actual amount of fishing effort using current methods and data. The only practical way of improving the estimates of the amount and type of bycatch is by having a more precise means of estimating effort. Therefore, Amendment 13 to the GOM shrimp fishery amended the Fishery Management Plan to include a mandatory electronic logbook program for a random sample of federally-permitted vessels.

Affected Public: Businesses or other for-profit organizations.

Frequency: Every two months.

Respondent's Obligation: Mandatory.

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

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

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

Dated: May 29, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–12926 Filed 6–2–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: U.S. Census Bureau.

Title: Survey of Plant Capacity Utilization.

Form Number(s): MQ–C2.

OMB Control Number: 0607–0175.

Type of Request: Extension of a currently approved collection.

Burden Hours: 52,500.

Number of Respondents: 7,500.

Average Hours per Response: 1 hour and 45 minutes.

Needs and Uses: With support from the Federal Reserve Board (FRB), the U.S. Census Bureau requests an extension of approval for the Survey of Plant Capacity Utilization (SPC). The survey is conducted quarterly. The survey provides information on use of industrial capacity in manufacturing and publishing plants as defined by the North American Industry Classification System (NAICS). It is the only source of capacity rates at industry levels. Changes in capacity utilization are considered important indicators of investment demand and inflationary pressure. For these reasons, the estimates of capacity utilization are closely monitored by government and private policy makers.

We use a mail-out/mail-back form. We also offer an electronic version of the form for reporting via the Internet. The survey collects the value of quarterly production and the value of production that could have been achieved if operating under ''full production'' capability. The ratio of the actual to the full is the basis of the estimates of capacity utilization. The survey also collects information by shift, on work patterns at the actual production level. Appendix A is a copy of the 2009 MQ–C2 form and instructions. Response to the quarterly survey is voluntary.

The FRB is the primary user of the current SPC data and has expressed the need for these quarterly data. The FRB publishes measures of industrial production (IP) that are either estimated from physical product data or estimated from monthly data on inputs to the production process, specifically production worker hours and an indicator of capital input. For many years, data on electric power use was used as the indicator of industry capital input. The deregulation of electricity markets led to the deterioration in the coverage and quality of the electricity data. As a result, in November 2005, the FRB discontinued its use of the industrial electric power data in the current estimates of IP. In order to maintain the quality of the IP index, the collection of these quarterly utilization data, such as the workweek of capital, become critical indicators of capital input use and industry output.

The FRB will use these data in several ways. First, the SPC data is the primary source of the benchmark information for utilization rates. Second, the capital workweek data will be used as an indicator of capital use in the estimation of monthly output (IP). Third, the workweek data will also be used to improve the projections of labor productivity that are used to align IP with comprehensive benchmark information from the Economic Census covering the Manufacturing sector and Annual Survey of Manufactures. And finally, the utilization rate data will assist in the assessment of recent changes in IP, as most of the high-frequency movement in utilization rates reflect production changes rather than capacity changes.

The Defense Logistics Agency uses the data to assess readiness to meet demand for goods under selected national emergency scenarios.

Affected Public: Business or other for-profit.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: May 28, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–12846 Filed 6–2–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1619]

Approval of Manufacturing Authority Within Foreign-Trade Zone 38, Spartanburg County, SC, ZF Lemförder Corporation (Automotive Suspension Systems)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18,

1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the South Carolina State Ports Authority, grantee of FTZ 38, has requested authority under Section 400.28(a)(2) of the Board's regulations on behalf of ZF Lemförder Corporation to assemble automotive suspension systems under FTZ procedures within FTZ 38—Site 7, Duncan, South Carolina (FTZ Docket 28–2008, filed 4–30–2008);

Whereas, notice inviting public comment has been given in the **Federal Register** (73 FR 25645, 5–7–2008);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for the assembly of automotive suspension systems within FTZ 38 for ZF Lemförder Corporation, as described in the application and **Federal Register** notice, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 7th day of May 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. E9–12964 Filed 6–2–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP53

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of applications for scientific research permits; request for comments.

SUMMARY: Notice is hereby given that NMFS has received applications for scientific research from the Fishery Foundation of California (FFC) in Elk Grove, CA (13675), and from the California Department of Water Resources (CDWR) in Sacramento, CA (14240). These permits would affect the federally endangered Sacramento River winter-run Chinook salmon and the threatened Central Valley spring-run Chinook salmon Evolutionarily Significant Units (ESUs), the federally threatened Central Valley steelhead Distinct Population Segment (DPS), and the federally threatened southern DPS of North American green sturgeon (North American green sturgeon). This document serves to notify the public of the availability of the permit applications for review and comment.

DATES: Written comments on the permit applications must be received no later than 5 p.m. Pacific Standard Time on July 6, 2009.

ADDRESSES: Comments submitted by e-mail must be sent to the following address: *FRNpermitsSAC@noaa.gov*. The applications and related documents are available for review by appointment, for permits 13675 and 14240: Protected Resources Division, NMFS, 650 Capitol Mall, Suite 8–300, Sacramento, CA 95814 (ph: 916–930–3600, fax: 916–930–3629).

FOR FURTHER INFORMATION CONTACT: Shirley Witalis at phone number 916–930–3606, or e-mail: *Shirley.Witalis@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531 1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222 226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to federally-listed endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*) ESU, threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*) ESU, threatened Central Valley steelhead (*O. mykiss*) DPS, threatened Central California Coast steelhead (*O. mykiss*), and North American green sturgeon (*Acipenser medirostris*).

Applications Received

FFC requests a 5–year permit (13791) for take of juvenile Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead, and juvenile North American green sturgeon associated with conducting surveys measuring fish response to initial and successional habitat conditions at a restored conservation bank site on the Sacramento River in the Central Valley, California. FFC requests authorization for estimated annual non-lethal take of 60 natural and 60 listed hatchery juvenile Sacramento River winter-run Chinook salmon, 575 natural and 550 listed hatchery juvenile Central Valley spring-run Chinook salmon, 60 natural and 58 listed hatchery juvenile Central Valley steelhead, and 2 natural juvenile DPS green sturgeon for five consecutive years resulting from capture (by trap/fyke net and beach seine), handling, species identification, enumerating, measuring, weighing, and releasing of fish.

CDWR requests a five-year permit (14092) for take of threatened Central Valley spring-run Chinook salmon, threatened Central Valley steelhead, and threatened North American green sturgeon in the lower Feather River, associated with monitoring and research activities conducted in the Feather River basin, Central Valley, California. CDWR requests authorization for an estimated annual non-lethal take of 250 natural and 250 listed hatchery spring-run Chinook salmon adults, and 1,250 natural and 1,250 listed hatchery spring-run Chinook salmon juveniles, and an estimated annual non-intentional lethal take of 11 natural and 11 listed hatchery spring-run adults, and 25 natural and 50 listed hatchery spring-run Chinook salmon juveniles; an estimated annual non-lethal take of 510 natural and 760 listed hatchery steelhead adults and 750 natural and 1,250 listed hatchery steelhead juveniles, and an estimated annual non-intentional lethal take of 10 natural and 25 listed hatchery steelhead adults, and 25 natural and 50 listed hatchery steelhead juveniles; and an estimated annual non-lethal take of 60 natural green sturgeon adults and 35 natural green sturgeon juveniles, and an estimated annual non-intentional lethal take of 2 natural green sturgeon adults and 1 natural green sturgeon juvenile for

five consecutive years resulting from the capture (by boat electrofisher, angling, trot line, gill/trammel net, beach seine), handling, anesthetizing, enumerating, measuring, tagging (pittag, radio tag, acoustic telemetry tag, Hallprint floy-tag), tissue (scale, otolith) sampling and analysis, releasing, and non-intentional mortality of fish, in association with the Federal Energy Regulatory Commission (FERC) Project No. 2100 Settlement Agreement for the re-licensing of the Oroville- Thermalito Complex Project:

Project 1 researches wild steelhead site-fidelity and growth through mark-recapture methods. Research activities associated with Project 1 include the capture of juvenile steelhead by boat electrofishing or seine block nets, tagging adult steelhead with radio and acoustic telemetry tags for tracking, recapture of tagged steelhead to calculate individual growth rates and to estimate population survival rates, taking length-weight measurements for calculating condition, and collecting scales and otoliths from adult steelhead to provide life history information on the Feather River population.

Project 2 researches characteristics of spring-run Chinook salmon holding pools and spawning habitats, spring-run migration timing, and spring-run salmon holding survival to spawning. Research activities associated with Project 2 include the capture of spring-run by angling, the tagging of spring-run with radio, acoustic tags and Hallprint tags, and the tracking of spring-run to understand movement and holding patterns of spring-run migration within the Feather River.

Project 3 researches impacts to green sturgeon in the lower Feather River from operational effects of Oroville Dam on river flow, temperature and green sturgeon habitat. Research activities associated with Project 3 include the capture of green sturgeon by fyke trap, gill/trammel net, trot line, and boat electrofisher; acoustic-tagging and tracking of green sturgeon to evaluate migration patterns, residence times, migration barriers; and identifying potential spawning grounds for green surgeon egg and larval surveys.

Dated: May 29, 2009.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–12946 Filed 6–2–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP51

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice, issuance of permit.

SUMMARY: Notice is hereby given that Natural Resource Scientists, Incorporated (NRS), P.O. Box 1210, Red Bluff, CA, 96080, has been issued a permit to take Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), Central Valley spring-run Chinook salmon (*O. tshawytscha*), and California steelhead (*O. mykiss*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s): Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521; and NMFS, Protected Resources Division, 650 Capitol Mall, Suite 8–300, Sacramento, CA 95814–4706; phone (916) 930–3600; fax (916) 930–3629.

FOR FURTHER INFORMATION CONTACT: Shirley Witalis, phone (916)930–3606.

SUPPLEMENTARY INFORMATION: On December 18, 2008, notice was published in the **Federal Register** (73 FR 77009), that a request for a scientific research permit to take Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead, and southern DPS of North American green sturgeon (Acipenser medirostris) had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Researchers will annually conduct site specific research at three irrigation diversion canal sites off the Sacramento River, within the Colusa, Sutter, and Yolo counties of the Central Valley, California. Entrained fish will be captured by fyke net, identified as to species/race, enumerated, measured for length, and placed back into the diversion canals; all entrained live fish will be placed back into the Sacramento River. This research is part of an on-going investigation into developing criteria for prioritizing fish screening projects, and will correlate fish entrainment with the physical, hydraulic, and habitat variables at each diversion site. The permit is issued for 2 years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of any endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 29, 2009.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–12966 Filed 6–2–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 23–2009]

Foreign-Trade Zone 119—Minneapolis-St. Paul, MN; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Metropolitan Area Foreign Trade Zone Commission, grantee of Foreign-Trade Zone 119, requesting authority to expand its zone to include additional sites in the Minneapolis-St. Paul, Minnesota area. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 21, 2009.

FTZ 119 was approved by the Board on July 24, 1985 (Board Order 305, 50 FR 31404, 8/2/85) and was expanded on April 14, 1994 (Board Order 690, 59 FR 19692, 4/25/94). The general-purpose zone consists of the following sites: *Site 1* (3,238 acres)—two adjacent parcels—Parcel 1A within the 3,002-acre Minneapolis-St. Paul International Airport, 6040 28th Avenue (500-acre activation limit) and Parcel 1B (236 acres) within the Bloomington Airport Industrial Park, southeast corner of the intersection of I–494 and State Highway 77, Bloomington; *Site 2* (960 acres)—Mid-City Industrial Park, 701 24th Avenue, Minneapolis; *Site 3* (13 acres)—Eagan Industrial Park, 3703 Kennebec Drive, Eagan; *Site 4* (20

acres)—Minneapolis Convention Center, located at 1301 Second Avenue South, Minneapolis. Sites 5 and 6 have expired.

The applicant is now requesting to expand the zone to include additional sites in the Minneapolis-St. Paul area: *Proposed Site 7* (193 acres)—Chaska Bio-Science Corporate Campus, located at the intersection of Carver County Road 10 and New U.S. Highway 212, Chaska; and, *Proposed Site 8* (200 acres)—Elk Run Bio-Business Park, located on the north side of U.S. Highway 52, approximately 2 miles southeast of the City of Pine Island. The sites are owned by the City of Chaska and Tower Investments, LLC, respectively. The sites will provide warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is August 3, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 17, 2009).

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Kathleen Boyce at *Kathleen_Boyce@ita.doc.gov* or (202) 482–1346.

Dated: May 21, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–12965 Filed 6–2–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1623

Grant of Authority for Subzone Status adidas Sales, Inc. (Footwear and Apparel Warehousing and Distribution); Spartanburg, South Carolina

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

WHEREAS, the Foreign-Trade Zones Act provides for ''...the establishment... of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

WHEREAS, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

WHEREAS, the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 38, has made application to the Board for authority to establish a special-purpose subzone at the warehouse and distribution facility of adidas Sales, Inc., located in Spartanburg, South Carolina, (FTZ Docket 54–2008, filed 10/20/08);

WHEREAS, notice inviting public comment has been given in the **Federal Register** (73 FR 64600, 10/30/08) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

WHEREAS, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

NOW, THEREFORE, the Board hereby grants authority for subzone status for activity related to athletic footwear and apparel warehousing and distribution at the facility of adidas Sales, Inc., located in Spartanburg, South Carolina (Subzone 38H), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 15th day of May 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration.

Alternate Chairman Foreign-Trade Zones Board.

ATTEST:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–12963 Filed 6–2–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of public open meeting (via conference call) on June 22, 2009.

SUMMARY: The Hydrographic Services Review Panel (HSRP) was established by the Secretary of Commerce to advise the Under Secretary of Commerce for Oceans and Atmosphere on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, its amendments, and such other appropriate matters as the Under Secretary refers to the Panel for review and advice.

The purpose of the June 22, 2009, conference call is to allow Panel members to deliberate and vote on proposed revisions to the National Oceanic and Atmospheric Administration (NOAA) contracting policy for mapping and charting services. NOAA is reviewing the contracting policy to meet requirements in accordance with the Omnibus Public Lands Management Act of 2009, specifically Title XII/Subtitle B: Ocean and Coastal Mapping Integration Act. Written public comments should be submitted to Rebecca Arenson, HSRP Coordinator, by June 15, 2009.

Date and Time: The conference call will convene at 2:30 p.m. Eastern Daylight Time, June 22, 2009, and end by 3:30 p.m. Eastern Daylight Time, if not earlier.

Location and Public Participation: The meeting will be open to the public, with teleconference access available in person from the following location: NOAA Facility, 1315 East-West Hwy, SSMC3, Room 6836, Silver Spring, Maryland. Seating is on a first-come,

first-served basis, and may be limited. All visitors to the NOAA facility will need to pre-register to be admitted through security. Please submit your name, time of arrival, e-mail address, and phone number to Rebecca Arenson no later than June 18, 2009, and she will provide you with instructions for admittance.

Written public comments should be submitted to Rebecca Arenson no later than June 15, 2009. Those individuals planning to provide oral comments are requested to inform Rebecca Arenson no later than June 15, 2009. The time period for oral comments may be limited.

Ms. Arenson's contact information is: Rebecca Arenson, HSRP Coordinator, Office of Coast Survey, National Ocean Service (NOS), NOAA (N/CS), 1315 East West Highway, Silver Spring, Maryland 20910; Telephone: 301–713–2780, extension 158; fax: 301–713–4019; e-mail: *Rebecca.Arenson@noaa.gov*.

It is recommended that interested public be present from the beginning of the meeting, as there is not a fixed time for the public comment period. The HSRP Chair will ask at large if there are any oral comments or questions from the public after the initial Panel discussion of the NOAA Ocean and Coastal Mapping Policy revisions. A final vote on recommendations for policy revisions will follow before the meeting ends.

FOR FURTHER INFORMATION CONTACT: Rebecca Arenson, Office of Coast Survey, National Ocean Service (NOS), NOAA (N/CS), 1315 East West Highway, Silver Spring, Maryland 20910; telephone: 301–713–2770; fax: 301–713–4019; e-mail: *Rebecca.Arenson@noaa.gov,* or visit the NOAA HRSP Web site at *http://nauticalcharts.noaa.gov/ocs/hrsp/hsrp.htm.*

SUPPLEMENTARY INFORMATION: The Panel will deliberate and vote on NOAA's suggested revisions to the current NOAA contracting policy on mapping and charting services. The revised contracting policy with be included in NOAA's August 2009 Report to Congress describing the NOAA Ocean and Coastal Mapping Policy. NOAA has followed the contracting policy for mapping and charting services, and subsequent revisions, since the establishment of the contracting policy in 1996. The contracting policy was last revised in August 2006.

The meeting agenda, the current contracting policy, and the proposed revised contracting policy will be available on the HRSP Web site prior to the June 22 meeting at: *http://nauticalcharts.noaa.gov/ocs/hrsp/hsrp.htm.*

Dated: May 26, 2009.

Steven Barnum,

NOAA, Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E9–12840 Filed 6–2–09; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Intent To Grant an Exclusive License; University of Maryland

AGENCY: National Security Agency, DoD.

ACTION: Notice.

SUMMARY: The National Security Agency hereby gives notice of its intent to grant University of Maryland a revocable, non-assignable, exclusive license to practice the following Government-Owned invention as described in U.S. Patent Application Serial No. 61/081,998 entitled: ''Flexible, High Specific Energy Density, Rechargeable Battery,'' filed with the U.S. Patent & Trademark Office on July 18, 2008, and any related non-provisional patent application and all Letters Patent issuing thereon, and any continuation, continuation-in-part or division of said non-provisional patent application and any reissue or extension of said Letters Patent, in the field of thin film batteries. The above-mentioned invention is assigned to the United States Government as represented by the National Security Agency.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with any supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the National Security Agency Technology Transfer Program, 9800 Savage Road, Suite 6541, Fort George G. Meade, MD 20755–6541.

FOR FURTHER INFORMATION CONTACT: Marian T. Roche, Director, Technology Transfer Program, 9800 Savage Road, Suite 6541, Fort George G. Meade, MD 20755–6541, telephone (443) 479–9569.

Dated: May 28, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–12883 Filed 6–2–09; 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 of closed meeting; rescheduled.

SUMMARY: The Department of Defense published an announcement of a closed meeting of the U.S. Nuclear Command and Control System Comprehensive Review Advisory Committee on May 15, 2009 (74 FR 22894–22895). The meeting was scheduled for June 2, 2009. This meeting has been rescheduled to June 24, 2009. All other information in the notice remains the same.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Jones, (703) 681–1924, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041.

Dated: May 27, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–12884 Filed 6–2–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 6, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov*.

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 Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 28, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New collection.

Title: IEPS Fulbright-Hays Group Projects Abroad Customer Surveys.

Frequency: On occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 1,629.

Burden Hours: 723.

Abstract: The purpose of this evaluation is to assess the impact of the Group Projects Abroad (GPA) program in enhancing the foreign language capacity of the United States. Three surveys will be conducted: a survey of the GPA Project Directors; a survey of 2002–2007 GPA alumni; and a survey of 2008 alumni. Results from the three surveys will inform the writing of a final report determining the impact of the GPA program.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3993. 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 the Internet address *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. E9–12834 Filed 6–2–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 6, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

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 Director, Regulatory Information Management Services, Office of Management, publishes a notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 28, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New collection.

Title: IEPS Language Resource Center (LRC) Customer Surveys.

Frequency: On occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 416.

Burden Hours: 194.

Abstract: The purpose of this evaluation is to assess the impact of the LRC program in enhancing the foreign language capacity of the United States. Three surveys will be conducted: A survey of LRC Project Directors; a survey of all members of the National Association of District Supervisors of Foreign Languages; and a survey of LRC Summer workshop participants. Results from the three surveys will inform the writing of a final report determining the impact of the LRC program.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3975. 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 the Internet address *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. E9–12837 Filed 6–2–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technology and Media Services for Individuals With Disabilities—National Center on Accessible Instructional Materials (AIM); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327T.

DATES: *Applications Available:* June 3, 2009.

Deadline for Transmittal of Applications: July 6, 2009.

Deadline for Intergovernmental Review: September 1, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the Technology and Media Services for Individuals with Disabilities program are to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology, (2) support educational media services activities designed to be of educational value in the classroom setting to children with disabilities, and (3) provide support for captioning and video description of educational materials that are appropriate for use in the classroom setting.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (*see* sections 674 and 681(d) of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 *et seq.*).

Absolute Priority: For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals with Disabilities—National Center on Accessible Instructional Materials (AIM).

Background: IDEA requires that the individualized education program for each child with a disability be designed to enable the child to be involved in and make progress in the general education curriculum (20 U.S.C. 1414(d)(1)(A)(i)(II)(aa)). Some children with disabilities, however, experience a significant barrier to making progress in the general education curriculum because they cannot effectively utilize print instructional materials such as textbooks (Rose & Meyer, 2002; Rose, Meyer & Hitchcock, 2005; Stahl, 2007). For example, studies show that, for many children with disabilities, a neurologically based reading dysfunction limits their ability to read and learn from print instructional materials (Shaywitz, 1998; 2002; 2005; 2006).

The 2004 amendments to IDEA required the Secretary to establish the National Instructional Materials Accessibility Standard (NIMAS) and required States to adopt NIMAS for the purpose of providing instructional materials in specialized formats in a timely manner for use in elementary and secondary schools by children who are blind or who have print disabilities (20 U.S.C. 1412(a)(23)(A)). The 2004 amendments also established the National Instructional Materials Access Center (NIMAC) as a national repository to receive and store NIMAS source files and make them available to States.

State educational agencies (SEAs) and local educational agencies (LEAs) now obtain NIMAS file sets directly from publishers or from NIMAC and convert those files into specialized formats for use by students who need accessible instructional materials (AIM). The files obtained from NIMAC may only be used for children with disabilities who are eligible under IDEA and meet the definition of blind or other persons with print disabilities in the Act to Provide Books for the Adult Blind (2 U.S.C. 135a), which establishes eligibility criteria for individuals served by the Library of Congress (LOC) regulations (36 CFR 701.6(b)(1)). These eligibility criteria cover individuals who are blind, have other visual disabilities, are unable to read or use standard print as a result of physical limitations, or have reading disabilities resulting from organic dysfunction. The regulations implementing Part B of IDEA require SEAs and LEAs to ensure that children with disabilities who need instructional materials in accessible formats, but are not included under the LOC definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files obtained through NIMAC, receive those instructional materials in a timely manner (34 CFR 300.172(b)(3) and 300.210(b)(3)).

The Office of Special Education Programs (OSEP) funded the NIMAS TA Center (*http://www.nimas.cast.org*) in September 2004 to support the implementation of NIMAS-related requirements and to provide technical assistance (TA) and information to SEAs, LEAs, and other stakeholders in the preparation, delivery, and conversion of NIMAS file sets. However, the NIMAS TA Center targeted its efforts on addressing the need for AIM for children eligible under LOC regulations. A recent national survey of States found that the implementation of NIMAS is underway within States, but that States have encountered difficulty in developing and implementing unified distribution systems for AIM to serve the needs of all children with disabilities (Project Forum, 2007). SEAs and LEAs need sustained TA to provide high-quality materials in a timely manner and to improve their distribution systems because of the complexity of developing and implementing a unified distribution system that is responsive to IDEA requirements, the LOC criteria for eligibility, and section 121 of the Copyright Act.[1] State systems must address simultaneously the concerns of multiple participants in the system, including students and families, teachers, local schools, SEAs and LEAs, educational publishers, software developers, accessible media producers (AMPs), and distributors. Continued TA can help States develop efficient State distribution systems so that all children with disabilities receive AIM in a timely manner.

Priority: The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of a national center on AIM (Center). The Center will provide TA to SEAs, LEAs, and other stakeholders: (1) To improve the implementation of NIMAS; and (2) to develop and implement unified distribution systems in SEAs that will improve the timely delivery of high-quality AIM to all children with disabilities who need instructional materials in accessible formats.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. Any project funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements

An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and

[1] The Chafee Amendment to Chapter 1 of Title 17, United States Code, adds section 121, establishing a limitation on the exclusive rights in copyrighted works. The Amendment allows authorized entities to reproduce or distribute copies or phonorecords of previously published nondramatic literary works in specialized formats exclusively for use by blind or other persons with disabilities.

provides a framework for both the formative and summative evaluations of the project;

Note: The following Web site provides more information on logic models and lists multiple online resources: *http://www.cdc.gov/eval/resources.htm.*

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(d) A budget for a summative evaluation to be conducted by an independent third party;

(e) A budget for attendance at the following:

(1) A one and one-half day kick-off meeting to be held in Washington, DC, within four weeks after receipt of the award, and an annual planning meeting held in Washington, DC, with the OSEP Project Officer during each subsequent year of the project period.

(2) A three-day Project Directors' Conference in Washington, DC, during each year of the project period.

(3) A four-day Technical Assistance and Dissemination Conference in Washington, DC, during each year of the project period.

(4) A one-day trip annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(f) A line item in the proposed budget for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's activities, as those needs are identified in consultation with OSEP.

Note: With approval from the OSEP Project Officer, the Center must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period.

Project Activities

To meet the requirements of this priority, the Center, at a minimum, must conduct the following activities:

Knowledge Development Activities

(a) Identify and document current approaches used by SEAs and LEAs, where appropriate, for developing and implementing efficient, unified distribution systems for the delivery of AIM to all children with disabilities who require instructional materials produced in accessible formats. This activity should occur during the first year of the project.

(b) Describe in detail the necessary components of efficient, unified distribution systems for the delivery of AIM in a timely manner. These components must include but are not limited to the following:

(1) Implementation of tracking systems that provide for digital rights management and measure timely delivery.

(2) Coordination with textbook adoption authorities and assistive technology projects within SEAs.

(3) Utilization of existing general education distribution systems, resource centers, and professional development systems. This knowledge development activity should occur during the first and second years of the project.

Technical Assistance and Dissemination Activities

(a) Work directly with SEAs to ensure that distribution systems are high-quality and deliver AIM in a timely manner to children with disabilities. To address this requirement the Center must—

(1) Work directly with a minimum of ten States to assist the SEAs in developing and implementing a plan to develop a unified distribution system or improve their existing distribution system for AIM;

(2) Develop and coordinate a national TA network comprised of a cadre of experts that the Center will use to provide TA to SEAs, LEAs, and other stakeholders to develop a unified distribution system or improve their existing State distribution systems for the delivery of AIM to children with disabilities; and

(3) Disseminate information to SEAs and LEAs about improving the timely delivery of AIM and increasing the quantity and improving the quality of commercially available AIM through their print instructional materials adoption processes, procurement contracts, or other practices or instruments used for purchase of print instructional materials (34 CFR 300.172(c)).

(4) Disseminate information to SEAs and LEAs on developing and implementing a unified distribution system that is responsive to IDEA requirements, the LOC criteria for eligibility, and section 121 of the Copyright Act.

(b) Provide a continuum of general TA and dissemination (TA&D) activities, (*e.g.*, managing Web sites, listservs, and communities of practice, and holding training institutes) to assist SEAs—

(1) In developing and implementing quality indicators of their distribution systems that: Define high-quality AIM, describe the State definition of ''timely manner'' (34 CFR 300.172(a)(2)) and use that definition to assess whether children who need AIM receive these materials in a timely manner, identify elements that support an efficient flow of materials in the distribution system, and use effective protocols for digital rights management;

(2) In providing exemplars and other information to publishers, AMPs, and other stakeholders on the use of NIMAS (*e.g.,* in support for Scalable Vector Graphics (SVG) and Mathematical Markup Language (MathML)). The following Web sites provide information on SVG and MathML: *http://www.w3.org/Graphics/SVG* and *www.w3.org/Math;* and

(3) To the maximum extent possible, in meeting their obligation to work collaboratively with the State agency responsible for assistive technology programs (34 CFR 300.172(d); 20 U.S.C. 1412(a)(23)(D)).

(c) Prepare and disseminate reports, documents, practice guides, and other materials on the implementation of State distribution systems for the delivery of AIM, the quality indicators related to an effective distribution system, the use of AIM, and related topics, as requested by OSEP, for specific audiences, including parents, teachers, textbook selection committees, and SEA administrators.

(d) Maintain a Web site that meets government or industry-recognized standards for accessibility and that links to the Web site operated by the Technical Assistance Coordination Center (TACC).

Leadership and Coordination Activities

(a) On an annual basis, compile and share data, in collaboration with other currently funded OSEP centers, on the implementation of NIMAS. To complete this activity, the Center must—

(1) Review and summarize NIMAS-related data from sources such as IDEA State Annual Performance Reports (APRs) and the updated State Performance Plans (SPPs). The following Web site provides more information on APRs and SPPs: *http://www.rrfcnetwork.org/content/view/409/47/*;

(2) Prepare a summary report annually on the status of the implementation of NIMAS and disseminate the findings of the

summary report to OSEP, SEAs, LEAs, and other stakeholders; and

(3) Provide recommendations to OSEP on the most meaningful and useful ways to analyze and aggregate the data reported by States on IDEA Part B indicators relevant to NIMAS implementation at the national level. The following Web site provides more information on the SEAs' adoption of NIMAS: *http://www.ed.gov/policy/speced/guid/idea/monitor/nimac.html.*

(b) Establish and maintain an advisory committee to review the activities and outcomes of the Center and provide programmatic support and advice throughout the project period. At a minimum, the advisory committee must meet on an annual basis and must include: SEA and LEA personnel involved with the distribution of AIM, textbook adoption personnel, individuals with disabilities or parents of children with disabilities, OSEP-funded technology grants that relate to NIMAS and that improve results for children with disabilities, and other stakeholders and project directors of Department-funded centers that relate to the implementation of NIMAS requirements. The Center must submit the names of the proposed members of the advisory committee to OSEP for approval within eight weeks after receipt of the award.

(c) Communicate and collaborate with currently funded OSEP projects including NIMAC; Bookshare.org for Education; Recording for the Blind & Dyslexic; the NIMAS center (which OSEP intends to fund in FY 2009); and TACC. This collaboration could include the joint development of products, the coordination of TA services, and the planning and carrying out of TA meetings and events, including the convening of an annual meeting of these projects to ensure a well-designed national distribution system for SEAs and LEAs and to reduce duplication of effort and improve the delivery time for specialized formats.

(d) Communicate and collaborate with postsecondary groups to help facilitate coordinated efforts between the K–12 and postsecondary AIM distribution systems, as appropriate.

(e) Participate in, organize, or facilitate, as directed by OSEP, communities of practice (*http://www.tacommunities.org/*) that are aligned with the Center's objectives as a way to support discussions and collaboration among key stakeholders.

(f) Prior to developing any new product, whether paper or electronic, submit to the OSEP Project Officer and the Proposed Product Advisory Board at OSEP's TACC for approval, a proposal describing the content and purpose of the product.

(g) Coordinate with the National Dissemination Center for Individuals with Disabilities to develop an efficient and high-quality dissemination strategy that reaches broad audiences. The Center must report to the OSEP Project Officer the outcomes of these coordination efforts.

(h) Contribute, on an ongoing basis, updated information on the Center's services to OSEP's Technical Assistance and Dissemination Matrix (*http://matrix.rrfcnetwork.org/*), which provides current information on Department-funded TA services to a range of stakeholders.

(i) Conduct formative and summative evaluations of the Center that are aligned with the evaluation plan. These evaluations must examine the outcomes or impact of the Center's activities in order to assess the effectiveness of those activities. These evaluations will be reported to OSEP at least annually in the case of the formative evaluation and at the end of the project period for the summative evaluation.

(j) Maintain ongoing communication with the OSEP Project Officer through monthly phone conversations and e-mail communication. *Fourth and Fifth Years of the Project:* In deciding whether to continue funding the Center for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be conducted during a one-day meeting in Washington, DC, that will be held during the last half of the second year of the project period.

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) The quality, relevance, and usefulness of the Center's activities and products, and the degree to which the Center's activities and products have contributed to the development and improvement of State distribution systems for the efficient delivery of AIM for children with disabilities.

References:

Mueller, E. & Burdett, P. (2007). The National Instructional Materials Accessibility Standard (NIMAS): Current State Implementation. Project Forum: Alexandria, VA.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative Agreement.

Estimated Available Funds: $1,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2010 from the list of unfunded applicants from this competition.

Maximum Award: We will reject any application that proposes a budget exceeding $1,000,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian Tribes or Tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (*see* section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.327T.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, abstracts, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: June 3, 2009.

Deadline for Transmittal of Applications: July 6, 2009.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 1, 2009.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E–Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E–Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If e-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. Submission of Paper Applications by Mail

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327T), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327T), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final

performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technology and Media Services for Individuals with Disabilities program. These measures focus on the extent to which projects provide high–quality products and services, are relevant to improving outcomes for children with disabilities, and contribute to improving outcomes for children with disabilities. We will collect data on these measures from the project funded under this competition.

The grantee will be required to report information on its project's performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Michael Slade, U.S. Department of Education, 400 Maryland Avenue, SW., room 4175, Potomac Center Plaza (PCP), Washington, DC 20202–2550. Telephone: (202) 245–7527.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Andrew J. Pepin, Executive Administrator for the Office of Special Education and Rehabilitative Services to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: May 28, 2009.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

[FR Doc. E9–12903 Filed 6–2–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technology and Media Services for Individuals With Disabilities—National Instructional Materials Accessibility Standard (NIMAS); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327P.

DATES:

Applications Available: June 3, 2009.

Deadline for Transmittal of Applications: July 6, 2009.

Deadline for Intergovernmental Review: September 1, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the Technology and Media Services for Individuals with Disabilities program are to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media services activities designed to be of educational value in the classroom setting to children with disabilities; and (3) provide support for captioning and video description of educational materials that are appropriate for use in the classroom setting.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute or otherwise authorized in the statute (see sections 674 and 681(d) of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1474 and 1481(d)).

Absolute Priority: For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals With Disabilities—NIMAS.

Background: The National Instructional Materials Accessibility Standard (NIMAS) was established by the Secretary of Education, pursuant to sections 612(a)(23)(A) and 674(e)(4) of IDEA, for publishers to create electronic files that can be used by States and accessible media producers (AMPs) to produce accessible versions of print instructional materials. Publishers must apply NIMAS in the production of electronic file sets for all print instructional materials, as defined in section 674(e)(3)(C) of IDEA (20 U.S.C. 1474(e)(3)(C)), published after July 19, 2006. The purpose of this requirement is to ensure that publishers use a common standard to create electronic files that facilitate the production of accurate and reliable accessible versions of instructional materials. The goal is to help increase the quality, availability, and timely delivery of print instructional materials in accessible formats to children in elementary and secondary schools who are blind or who have print disabilities.

The Department of Education (Department) funded the NIMAS Development Center in September 2004 and charged it with providing recommendations to the Department on revisions and updates to the technical specifications of NIMAS. These updates were needed to ensure that NIMAS remained current with technological advances, was consistent with updates to the Digital Accessible Information System (DAISY) specification (DAISY is a worldwide standard for digital talking books), and addressed concerns that were identified during the implementation of NIMAS. The NIMAS Development Center also has developed technical clarification documents, conducted training and presentations, and contributed to the development of production and workflow models for publishers, distributors, AMPs, States, and local educational agencies (LEAs). Foremost among the NIMAS

Development Center's activities to promote, develop, and use technology related to making NIMAS a more effective standard has been its use of a NIMAS advisory board to address the challenges of maintaining alignment with the Extensible Markup Language (XML) standard upon which NIMAS is based and supporting the development and use of Mathematical Markup Language (MathML). The following Web site provides more information on the work of the NIMAS Development Center: *http://www.nimas.cast.org.*

The Department seeks to fund a center to continue some of the work of the NIMAS Development Center that was funded in 2004, including the provision of technical updates to NIMAS at least once during its five-year project period to ensure that state-of-the art technology is being used.

Priority: The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of a NIMAS center (Center) that will maintain and update the technical specifications of NIMAS to ensure that children with blindness and other print disabilities will have access to as broad a range of print instructional materials as possible through the use of electronic file formatting technology.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. Any project funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements. An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project;

Note: The following Web site provides more information on logic models: *http://www.cdc.gov/eval/resources.htm.*

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(d) A budget for a summative evaluation to be conducted by an independent third party;

(e) A budget for attendance at the following:

(1) A one day kick-off meeting to be held in Washington, DC, within four weeks after receipt of the award, and an annual planning meeting held in Washington, DC, with the Office of Special Education Programs (OSEP) Project Officer during each subsequent year of the project period.

(2) A three-day Project Directors' Conference in Washington, DC, during each year of the project period.

(3) A one-day trip annually to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP.

Project Activities. To meet the requirements of this priority, the Center, at a minimum, must conduct the following activities:

Technical Assistance and Dissemination Activities.

(a) Facilitate and support the technical compatibility of the NIMAS file set with the National Instructional Materials Access Center's (NIMAC) distribution system, including the technologies employed by publishers and other production facilities to create both high-quality NIMAS files as well as accessible commercial products.

(b) Maintain a Web site that meets government or industry-recognized standards for accessibility and that links to the Web site operated by OSEP's Technical Assistance Coordination Center (TACC) and the Web site for each OSEP-funded project that supports the implementation of NIMAS.

(c) Prepare and disseminate to the Department (1) reports at least midway through the project period on issues identified regarding the implementation of NIMAS and (2) recommendations on revising the technical specifications of NIMAS no later than during the fourth year of the project period. In consultation with the OSEP Project Officer, make selected reports, documents, and other materials available to, at a minimum, publishers, software developers, and AMPs.

Leadership and Coordination Activities.

(a) Establish and maintain a Standards Board to recommend updates to the technical specifications of NIMAS, including the extent to which future versions of NIMAS should incorporate universal design features, and provide technical support to OSEP throughout the project period. At a minimum, the Standards Board must meet on an annual basis in Washington, DC, and may meet more frequently through alternate means such as teleconferencing. The Standards Board must include: Technology experts; software engineers; accessible instructional materials (AIM) producers; and representatives from the publishing industry, the DAISY consortium, the Access Board, NIMAC, and the National Center on AIM that OSEP intends to fund in FY 2009. The Center must submit the names of proposed members of the Standards Board to OSEP for approval within eight weeks of receipt of the award.

(b) Communicate with, and solicit input from, a wide range of stakeholders, including currently funded OSEP programs (*e.g.,* NIMAC, the American Printing House for the Blind, Bookshare.org for Education, and Recording for the Blind & Dyslexic), and the National Center on AIM that OSEP intends to fund in FY 2009.

(c) Participate in, organize, or facilitate, as directed by OSEP, communities of practice (see *http://www.tacommunities.org*) that are aligned with the Center's objectives as a way to support discussions and collaboration among key stakeholders such as technology experts; software engineers; AIM producers; and representatives from the publishing industry, the DAISY consortium, the Access Board, NIMAC, and the National Center on AIM that OSEP intends to fund in FY 2009.

(d) Maintain ongoing communication with the OSEP Project Officer through monthly phone conversations and e-mail communication.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative Agreement.

Estimated Available Funds: $400,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2010 from the list of unfunded applicants from this competition.

Maximum Awards: We will reject any application that proposes a budget exceeding $400,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs); LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.327P.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, abstracts, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: June 3, 2009.

Deadline for Transmittal of Applications: July 6, 2009.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 1, 2009.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and

6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If e-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327P) LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327P) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications:

If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific groups.

This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Technology and Media Services for Individuals with Disabilities program. These measures focus on the extent to which projects provide high-quality products and services, are relevant to improving outcomes for children with disabilities, and contribute to improving outcomes for children with disabilities. We will collect data on these measures from the project funded under this competition.

The grantee will be required to report information on its project's performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

For Further Information Contact: Michael Slade, U.S. Department of Education, 400 Maryland Avenue, SW., room 4175, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7527.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Andrew J. Pepin, Executive Administrator for the Office of Special Education and Rehabilitative Services to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: May 28, 2009.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

[FR Doc. E9–12905 Filed 6–2–09; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Proposed Guidance on Voluntary Voting System Guidelines

AGENCY: United States Election Assistance Commission.

ACTION: Notice of proposed updates and revisions to the 2005 Voluntary Voting System Guidelines and request for public comment.

SUMMARY: The Help America Vote Act of 2002 (HAVA) (Pub. L. 107–252; 42 U.S.C. 15301 *et seq.* (October 29, 2002)) established the U.S. Election Assistance Commission (EAC). Section 202 of HAVA directs the EAC to adopt voluntary voting system guidelines (VVSG) and to provide for the testing, certification, decertification, and recertification of voting system hardware and software. The VVSG provides specifications and standards against which voting systems can be tested to determine if they provide basic functionality, accessibility, and security capabilities.

As required by Section 222(d) of HAVA the EAC is placing its proposed updates and revisions out for a 120-day public comment period. The EAC is asking for comments regarding all sections of the standards impacted by the update process. This updated and revised version of the VVSG will be known as Voluntary Voting System Guidelines v.1.1 (VVSG v.1.1).

The EAC made the decision to update and revise the 2005 VVSG as a result of feedback received through its Voting System Testing and Certification Program. As the EAC has worked to test and certify voting systems it observed and received feedback from various sources that the standards being tested to were at times ambiguous and difficult to apply in testing. This ambiguity has led to challenges in making testing consist both within a test laboratory and across different laboratories. In addition, the EAC has received feedback from the National Institute of Standards and Technology (NIST) that the creation of formalized test suites for the 2005 VVSG would be aided by a clarification of certain portions of document. This information, combined with the EAC's issuance of seventeen interpretations of the VVSG to clarify various standards,

led the EAC to propose improvements to the 2005 VVSG.

Specifically, the EAC determined to implement a number of recommendations submitted by the EAC's Technical Guidelines Development Committee (TGDC). On March 29, 2006, the TGDC held its first meeting to discuss the next iteration of the VVSG. Since that time, the TGDC has held numerous public meetings and subcommittee conference calls to create a set of draft guidelines for recommendation to the EAC (all TGDC meeting materials can be found at *http://www.vote.nist.gov*). On August 17, 2007, the TGDC voted to complete final edits of their recommendations and submit them to the Executive Director of the EAC. The EAC received the draft guidelines from the TGDC on August 31, 2007.

After receipt of the TGDC's recommendations for the next iteration of the VVSG the EAC opened a one hundred and eighty day public comment period. During this public comment period the EAC received over 3000 comments on the recommendations. In addition, during the comment period the EAC conducted a series of seven roundtable discussions regarding the TGDC's recommendations.

After the close of the public comment period for the TGDC's recommendations the EAC made the decision to update and revise the 2005 VVSG with portions of the TGDC's recommendations. The purpose of this revision is to clarify and improve the VVSG in order to allow for more efficient and consistent testing under the EAC's Testing and Certification Program.

In addition, to the observations and feedback produced by the EAC's Testing and Certification Program the gained additional information as a of the public comment review of the EAC's Technical Guidelines Development Committee's recommendations for the Next Iteration of the VVSG. During this comment period, which ran from September 2007 to May 2008 the EAC received comments praising many of the proposed standards as being more testable and less ambiguous as previous versions of the standard. Also, during this comment period the EAC held a series of seven round table discussions with various sections of the Election Community. During these round table discussions there was near unanimous agreement that the TGDC recommended standards were a clearly written and a more testable standard than the 2005 VVSG.

Based on all of this information the EAC made the decision to revise and update the 2005 VVSG with portions of the TGDC recommended version of the VVSG. While the EAC is continuing to work with the next iteration of the standards it felt it was important to revise and update the 2005 VVSG. The purpose for these revisions and updates is to:

♦ Improve the clarity and testability of the VVSG.

♦ Ensure consistency of testing by accredited test laboratories.

♦ Aid NIST in the development of test suites for the VVSG.

♦ Minimize the need for EAC interpretations of the standards.

♦ Update portions of VVSG requirements to reflect advancements in voting technology.

In evaluating which sections of the TGDC recommendations to use to update the 2005 VVSG the EAC/NIST used the following criteria:

♦ Those sections which would not require hardware changes to current voting systems.

♦ Those sections which would not require complex software changes to current voting systems.

♦ Those sections which cause no substantial changes to the overall structure of the 2005 VVSG.

♦ Those sections which clarify or improve portions of the 2005 VVSG in order to allow for development of test cases.

With those criteria in mind the EAC chose to revise the following sections of the 2005 VVSG with the following sections of the TGDC recommendations:

1. Hardware and Software Performance Benchmarks and Test Method

- Volume I Section 4.1.1 of the 2005 VVSG is replaced by Part 1 Section 6.3.2 (Accuracy) of the TGDC Recommendations.
- Volume I Section 4.1.5.1.e.ii (under Ballot Handling) and 4.1.5.2.f (under Ballot Reading Accuracy) of the 2005 VVSG are replaced by Part 1 Section 6.3.3 (Misfeed Rate) of the TGDC Recommendations.
- Volume I Section 4.3.3 of the 2005 VVSG is replaced by a condensed version of Part 1 Section 6.3.1 (Reliability) of the TGDC Recommendations.
- To update the test method, Volume II Appendix C of the 2005 VVSG is completely replaced by Part 3 Section 5.3 of the TGDC Recommendations. Volume II Sections 4.7.1.1 and 4.7.3 of the 2005 VVSG are deleted. Volume II Sections 1.8.2.3 and 4.5 of the 2005 VVSG are harmonized with Part 3 Section 2.5.3 of the TGDC Recommendations.

2. Software Workmanship

- Volume I Section 5.2 of the 2005 VVSG is replaced by Part 1 Sections 6.4.1 through 6.4.1.8 of the TGDC Recommendations.
- Volume II Section 5.4 of the 2005 VVSG is replaced by Part 3 Section 4.5.1 of the TGDC Recommendations.
- Volume II Section 1.8.2.6 (Certification Test Practices) of the 2005 VVSG is harmonized with Part 3 Section 2.5.5 of the TGDC Recommendations to clarify the handling of logic defects.

3. Test Plan and Test Report—Appendices A and B of Volume II of the 2005 VVSG are harmonized with the current EAC manuals and NOC 09–001.

4. TDP and Voting Equipment User Documentation—Volume II Section 2.1.1.1 of the 2005 VVSG is revised to include an outline of the TDP and the Voting Equipment User Documentation that is based on the TGDC Recommendations. Miscellaneous TDP requirements are added or modified to correct problems:

- Volume II Section 2.1.3 (Protection of Proprietary Information) is harmonized with EAC manuals.
- An obsolete normative reference is removed from Volume II Section 2.7.1.
- Volume II Sections 2.2.1 and 2.5.5.2 have new requirements to identify the compilers and interpreters used by the voting system.
- Volume II Section 2.2.2 has a new requirement for optical scanners, to specify what constitutes a reliably detectable mark versus a marginal mark.
- Volume II Section 2.8.5 has a new requirement to detail the care and handling precautions necessary for removable media to last the statutory 22 months.

5. (Non-EMC) Environmental Hardware

- Volume I Section 4.1.2.13 (Environmental Control—Operating Environment) of the 2005 VVSG is revised with an operational temperature and humidity test requirement, with temperatures ranging from 41 °F to 104 °F (5 °C to 40 °C) and relative humidity from 5% to 85%, non-condensing.
- Volume II Section 4.7.1 (Temperature and Power Variation Tests) is replaced with requirements for testing according to appropriate procedures of MIL–STD–810D. Most of the previous text in this section was devoted to test materials, including detailed test scenarios, which will be included in the test materials for the 2005 VVSG revision.

6. Human Factors Requirements—The usability and accessibility requirements in Volume I Section 3 of the 2005 VVSG are replaced with requirements from

Part 1 Chapter 3 of the TGDC Recommendations, with the exception of Chapter 3's performance benchmark requirements. Part 1 Chapter 3 of the TGDC Recommendations is primarily a maintenance level upgrade to the 2005 VVSG with minor modifications, clarifications, and a few additions including performance and poll worker usability requirements. (The VSS 2002 contained almost no usability, accessibility, and privacy requirements. As a result, the 2005 VVSG Section 3 was mostly new material based on research, best practices, and standards relating to human factors and the design of user interfaces as they apply to voting systems.)

7. System Security Documentation Requirements—Security documentation requirements in Volume II Section 2.6 (Security Documentation) of the 2005 VVSG are revised with requirements from Part 2 Section 3.5 (System Security Specification) of the TGDC Recommendations. The new requirements include high-level security descriptions of the voting system and specific areas including

- Access control,
- Software installation security,
- System event logging,
- Physical security,
- Setup inspection, and
- Cryptography.

8. Electronic Records—Section 2.4.4 (Electronic Records) has been added to Volume I Section 2 (Functional Requirements) of the 2005 VVSG; it contains requirements from Part 1 Chapter 4.3 (Electronic Records) of the TGDC Recommendations. These requirements cover the electronic reports generated by the voting system, including specific reports for tabulators and Election Management Systems (EMS).

9. Voter Verified Paper Audit Trails (VVPAT)—VVPAT requirements in Volume I Sections 7.9.1 through 7.9.4 (Voter Verifiable Paper Audit Trail Requirements) are replaced with requirements from Part 1 Chapter 4.4.2 (VVPAT) of the TGDC Recommendations.

10. Cryptography—Cryptography requirements in the 2005 VVSG are revised with requirements from Part 1 Section 5.1 (Cryptography) of the TGDC Recommendations. When cryptography is used in a voting system, the requirements call for the use of a level 1 FIPS 140 validated cryptographic module (which allows software as well as hardware implementations, whereas the TGDC Recommendations allowed only hardware implementations). In addition, the new requirements require the use of NIST approved cryptographic algorithms at the 112-bit security strength or higher.

11. External Interface Requirement—Volume I Section 7.4.6 (Software Setup Validation) of the 2005 VVSG are revised with newly developed requirements to allow an alternative method to validate software on voting systems. The requirements state that voting systems must support one of the two verification methods specified in the requirements. The current software verification method allows software to be verified after software has been installed. The alternative software verification method verifies software as it is being installed on the voting system and requires voting systems to have mechanisms to protect the software once installed.

12. EAC Requests for Interpretation (RFI) decisions—Requirements and discussion throughout the 2005 VVSG are revised based on the current set of EAC RFI decisions, from 2007–01 through 2008–12, located at *http://www.eac.gov/program-areas/voting-systems/voting-system-certification/interpretations.*

13. General Edits—Several sections of the VVSG were revised to improve the consistency of wording or fix errors in the 2005 VVSG. In addition, several sections were revised to recognize the creation of the EAC's Testing and Certification Program which was not in place at the time of adoption of the 2005 VVSG.

DATES: Comments must be received on or before 4 p.m. EST on September 28, 2009.

Submission of Comments: The public may submit comments through one of the three different methods provided by the EAC: (1) Online electronic comment form at *http://www.eac.gov*, (Please note that the electronic comment tool will not be immediately available. The EAC will inform the public once the online comment tool becomes available.); (2) by mail to Voluntary Voting System Guidelines Comments, U.S. Election Assistance Commission, 1225 New York Ave, NW., Suite 1100, Washington, DC 20005; and (3) via e-mail at *votingsystemguidelines@eac.gov.* Members of the public are encouraged to submit comments electronically to ensure timely receipt and consideration.

In order to allow efficient and effective review of comments the EAC requests that:

(1) Comments refer to the specific section that is the subject of the comment.

(2) General comments regarding the entire document or comments that refer to more than one section be made as specifically as possible so that EAC can clearly understand to which portion(s) of the documents the comment refers.

(3) To the extent that a comment suggests a change in the wording of a requirement or section of the guidelines, please provide proposed language for the suggested change.

To Obtain a Copy of the VVSG Volume Version 1.1: Due to the fact that the Voluntary Voting System Guidelines are more than 400 pages in length, the entire draft document has not been attached to this notice. A complete copy of the draft VVSG version 1.1 is available from the EAC in electronic format. An electronic copy can be downloaded in PDF format on the EAC's Web site, *http://www.eac.gov.* In order to obtain a paper copy of the TGDC draft recommendations please mail a written request to Voluntary Voting System Guidelines Comments, U.S. Election Assistance Commission, 1225 New York Ave, NW., Suite 1100, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Matthew Masterson, Phone (202) 566–3100, e-mail *votingsystemguidelines@eac.gov.*

SUPPLEMENTARY INFORMATION: Prior to the passage of HAVA, the Federal Election Commission (FEC) published the 2002 Voting System Standards (VSS). HAVA mandated that the EAC update the VSS. In December of 2005 the EAC adopted the 2005 VVSG. The 2005 VVSG used many of the same requirements as the 2002 VSS but it expanded the security, accessibility, and usability sections.

Donetta L. Davidson,

Commissioner, U.S. Election Assistance Commission.

[FR Doc. E9–12831 Filed 5–29–09; 11:15 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–356]

Application To Export Electric Energy; J.P. Morgan Commodities Canada Corporation

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: J.P. Morgan Commodities Canada Corporation (JPMCCC) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before July 6, 2009.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On May 26, 2009, DOE received an application from JPMCCC for authority to transmit electric energy from the United States to Canada as a power marketer. The energy to be exported would be delivered to Canada over existing transmission interconnections between the United States and Canada over any facility determined by DOE to be appropriate for third-party use. The electric energy which JPMCCC proposes to export to Canada would be surplus to the needs of the selling entities. JPMCCC has requested an electricity export authorization with a 5-year term.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the JPMCC application to export electric energy to Canada should be clearly marked with Docket No. EA–356. Additional copies are to be filed directly with Ike Gibbs, Compliance Director & Assistant General Counsel, JPMorgan Chase Bank, NM.A., 700 Louisiana Street, Suite 1000, Houston, TX 77002. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on May 29, 2009.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E9–12921 Filed 6–2–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–354]

Application to Export Electric Energy; Endure Energy, L.L.C.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Endure Energy, L.L.C. (Endure Energy) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before July 6, 2009.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On May 15, 2009, DOE received an application from Endure Energy for authority to transmit electric energy from the United States to Canada as a power marketer. The energy to be exported would be delivered to Canada over international electric transmission facilities deemed to be appropriate by DOE for third party transportation. The electric energy which Endure Energy proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. Endure Energy has requested an electricity export authorization with a 5-year term.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Endure Energy application to export electric energy to Canada should be clearly marked with Docket No. EA–354. Additional copies are to be filed directly with Mark A. Blackton, Executive Vice President, Endure Energy, L.L.C., 7300 College Boulevard, Suite 600, Overland Park, KS 66210 and William A. Mogel, Attorney at Law, 5812 Madaket Road, Bethesda, MD 20816. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on May 28, 2009.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E9–12916 Filed 6–2–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–355]

Application to Export Electric Energy; Scotia Capital Energy Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Scotia Capital Energy Inc. (Scotia Capital) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before July 6, 2009.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On May 26, 2009, DOE received an application from Scotia Capital for authority to transmit electric energy from the United States to Canada as a power marketer using international transmission facilities located at the United States border with Canada. Scotia Capital does not own any electric transmission facilities nor does it hold a franchised service area. The electric energy which Scotia Capital proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. Scotia Capital has requested an electricity export authorization with a 5-year term.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Scotia Capital application to export electric energy to Canada should be clearly marked with Docket No. EA–355. Additional copies are to be filed directly with Cecilia Williams, Managing Director and Head of Compliance, Scotia Capital, 40 King Street West, 33rd Floor, Toronto, ON, M5H 1H1, Canada and David J. Levine, McDermott Will & Emery LLP, 600 13th Street, NW., Washington, DC 20005–3096. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://www.oe.energy.gov/permits_pending.htm,* or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on May 29, 2009.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E9–12922 Filed 6–2–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–415–000]

Northwest Pipeline GP; Notice of Application

May 27, 2009.

Take notice that on May 20, 2009, Northwest Pipeline GP (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP09–415–000, an application pursuant to section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations thereunder, requesting the Commission to grant a certificate of public convenience and necessity authorizing Northwest to construct and operate its Sundance Trail Expansion Project (Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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) 420–5589.

Specifically, Northwest's states that its proposed Project consists of: (1) The construction of new expansion capacity; and (2) replacement and reliability work related the Northwest's existing system capacity. The proposed Project will provide 150,000 Dth/d of firm transportation capacity from the Greasewood and Meeker/White River Hubs in Rio Blanco County, Colorado to the Opal Hub area in Lincoln County, Wyoming which is created by utilizing new facilities as well as available unsubscribed capacity on Northwest's system. The new Project facilities consist of: (1) Approximately 15.5 miles of 30-inch diameter pipeline loop between milepost 422.2 to 437.7 in Lincoln County, Wyoming and (2) the replacement, construction and operation of compression facilities (net 3,980 ISO horsepower increase), at the Vernal Compressor Station in Uintah County, Utah. The replacement and reliability work consists of abandonment of the two Allison Delaval centrifugal compressor units (3,165 horsepower each) at the Vernal Compressor Station with a new Solar Taurus 70 turbine driven centrifugal compressor unit (10,310 horsepower). In addition, Northwest requests a pre-determination of roll-in for costs associated with the Project. Northwest states that the estimated total cost of the Project, including the removal costs of the existing facilities is approximately $59.4 million, of which approximately $46.7 million reflects the cost of expansion capacity and $12.7 million reflects the costs of replacement and reliability work at the Vernal Compressor Station.

Any questions regarding this application should be directed to Lynn Dahlberg, Manager Certificates and Tariffs, Northwest Pipeline GP, 295 Chipeta Way, Salt Lake City, Utah 84108, at 801–584–6851.

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.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link at *http://www.ferc.gov*. The Commission strongly encourages intervenors to file electronically. 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: 5 p.m. Eastern Time on June 17, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12870 Filed 6–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12576–004]

CRD Hydroelectric, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

May 27, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original License.

b. *Project No.:* 12576–004.

c. *Date Filed:* February 24, 2009.

d. *Applicant:* CRD Hydroelectric, LLC.

e. *Name of Project:* Red Rock Hydroelectric Project.

f. *Location:* On the Des Moines River, in Marion County, Iowa. The project would be located at U.S. Army Corps of Engineer facilities.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Douglas A. Spaulding, Nelson Energy LLC, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426; (952) 544–8133.

i. *FERC Contact:* Timothy Konnert, (202) 502–6359 or *timothy.konnert@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The proposed Red Rock Hydroelectric Project would be located at the existing U.S. Army Corps of Engineers (Corps) Red Rock dam, which was constructed by the Corps in 1969 for flood control. The existing Corps facilities consist of: (1) A 110-foot-high, 6,260-foot-long earth-fill dam with a 241-foot-long gated ogee spillway equipped with five 45-foot-high tainter gates; and (2) a 15,253-acre reservoir at a normal conservation pool water surface elevation of 742.0 feet National Geodetic Vertical Datum of 1929.

The proposed project would utilize the head created by the existing Corps dam and consist of: (1) A new, 127-foot-long by 19-foot-wide intake structure connected to; (2) three new 19-foot-diameter, 211-foot-long penstocks passing through the left side of the spillway leading to; (3) a new 59-foot-long by 132-foot-wide powerhouse located directly downstream of the existing spillway structure containing three new 12.13-megawatt (MW) generating units with a total installed capacity of 36.4 MW; (4) a new 8.4-mile-long, 69-kilovolt transmission line; and (5) appurtenant facilities. The estimated average annual generation would be 158,000 megawatt hours.

The project would be operated in run-of-river mode in that it would have no storage and only use flows released by the Corps in accordance with its present operations.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket

number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document	October 2009.
Notice of application is ready for environmental analysis	January 2010.
Notice of the availability of the EA	November 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12868 Filed 6–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–419–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

May 27, 2009.

Take notice that on May 22, 2009, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) and Tennessee's blanket certificate issued in Docket No. CP82–413–000, for authorization to abandon by sale to XTO Offshore Inc. (XTO) a 5.4 mile, 12-inch supply lateral, designated as Line No. 509A–3400, that extends southeasterly from XTO's platform in West Cameron Block 485 and terminates at Stingray Pipeline Company, L.L.C.'s platform in West Cameron Block 509, along with associated metering equipment, two risers, and appurtenances, 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, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding the application should be directed to Susan T. Halbach, Senior Counsel, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas, 77002, at (713) 420–5751 or (713) 420–1601 (facsimile) or Kathy Cash, Principal Analyst, Certificates & Regulatory Compliance, at (713) 420–3290 or (713) 420–1605 (facsimile).

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to part 157.205 of the Commission's regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12863 Filed 6–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Call for 2015 Resource Pool Applications

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of the Sierra Nevada Region's Call for 2015 Resource Pool Applications.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing administration of DOE, published its 2004 Power Marketing Plan (Marketing Plan) for the Sierra Nevada Customer Service Region (SNR) in the **Federal Register** on June 25, 1999, at 64 FR 34417. The Marketing Plan specifies the terms and conditions under which Western will market power from the Central Valley Project (CVP) and the Washoe Project beginning January 1, 2005, and continuing through December 31, 2024. With this **Federal Register** notice, Western is issuing a call for applications for SNR's 2015 Resource Pool.

Preference entities who wish to apply for a new allocation of power from Western's SNR must submit a formal application using the Applicant Profile Data (APD) form and must meet the Eligibility and Allocation Criteria described in the Marketing Plan, as

revised (73 FR 79878 (2008)) and restated below. In addition, if a customer that currently has an allocation of power wishes to apply for a new allocation of power above and beyond its current allocation, it also must submit an application using the APD form and meet the revised Eligibility Criteria. In addition to the Eligibility Criteria, the Allocation and General Criteria and Contract Principles are defined in the Marketing Plan and also restated later in this **Federal Register**.

DATES: Entities interested in applying for an allocation of Western power must submit an application to Western's Sierra Nevada Customer Service Regional Office at the address below. Applications must be received by 4 p.m., PDT, on August 3, 2009. Applicants are encouraged to submit the APD form through electronic mail or to use certified mail. Applications will be accepted via regular mail through the U.S. Postal Service if postmarked at least 3 days before August 3, 2009, and received no later than August 5, 2009. Western will not consider applications that are not received by the prescribed dates. Western will publish a Notice of Proposed Allocations in the **Federal Register** after evaluating all applications.

ADDRESSES: Applications must be submitted to Ms. Sonja Anderson, Power Marketing Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630. APD forms with an electronic signature may be electronically mailed to *2015RPApps@wapa.gov.* If an entity submits an APD form electronically and an electronic signature is not available, the applicant must mail the signed APD form signature page to the address above, or scan the signed page and send it via electronic mail to *2015RPApps@wapa.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Sonja Anderson, Power Marketing Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630, (916) 353–4421, or by electronic mail at *sanderso@wapa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Marketing Plan provides for Western to offer up to 2 percent of SNR's marketable power resources available after 2014 to new and existing customers. On May 5, 2008, Western issued a notice in the **Federal Register** (73 FR 24592) seeking public comment on the exact size of the 2015 Resource Pool and a proposed modification to the Eligibility Criteria found in the Marketing Plan. Western held a public comment forum to accept verbal comments on the Proposed 2015 Resource Pool Size and Revised Eligibility Criteria on May 21, 2008. In addition, Western accepted written comments from the public through July 7, 2008. Western considered the comments received in developing the Final 2015 Resource Pool Size and Revised Eligibility Criteria published in the December 30, 2008, **Federal Register** (73 FR 79878). Through the 2015 Resource Pool Size and Revised Eligibility Criteria public process, it was determined that Western would offer exactly 2 percent of SNR's marketable power resources under the process in this **Federal Register** notice. Also, as discussed in the December 30, 2008, **Federal Register** (73 FR 79878), Western revised the Eligibility Criteria.

The Marketing Plan describes how SNR will market its power resources beginning January 1, 2005, through December 31, 2024. Western, at its discretion, will allocate a percentage of the 2015 Resource Pool to applicants that meet the Eligibility Criteria defined in the Marketing Plan as revised and restated below. This allocation percentage will be multiplied by the 2015 Resource Pool percentage to determine the applicant's percentage of the Base Resource as described in the Marketing Plan. Western will publish a Notice of Proposed Allocations in the **Federal Register** once those have been determined. The public will have an opportunity to comment on the Proposed Allocations. Once the final 2015 Resource Pool allocations have been determined and published, Western will work with the new allottees to develop a customized product to meet their needs as requested by such allottees and as more fully described in the Marketing Plan.

For ease of use, Western is restating herein the Eligibility, Allocation, and General Criterion and Contract Principles contained in its Marketing Plan (as revised by 73 FR 79878).

Eligibility Criteria

Western will apply the following Eligibility Criteria to all applicants seeking a resource pool allocation.

1. Applicants must meet the preference requirements of the Reclamation Law.
2. Applicants should be located within SNR's primary marketing area as defined in the Marketing Plan. If SNR's power resources are not fully subscribed, Western may market its resources outside the primary marketing area.
3. Applicants that require power for their own use must be ready, willing, and able to receive and use Federal power. Federal power shall not be resold to others.
4. Applicants that provide retail electric service must be ready, willing, and able to receive and use the Federal power to provide electric service to their customers, not for resale to others.
5. Applicants must submit an application in response to this **Federal Register** notice according to the procedures in the **DATES** section above.
6. Native American applicants must be an Indian tribe as defined in the Indian Self Determination Act of 1975 (25 U.S.C. 450b, as amended).
7. SNR will normally not allocate power to applicants with loads of less than 1 megawatt (MW); however, allocations to applicants with loads which are at least 500 kilowatts may be considered if the loads can be aggregated with other customers' and/or allottees' loads to schedule and deliver to a minimum load of 1 MW.

Allocation Criteria

Western will apply the following Allocation Criteria to all applicants receiving a resource pool allocation.

1. Allocations will be made in amounts determined solely by Western in exercise of its discretion under Reclamation Law and considered to be in the best interest of the United States Government.
2. Allocations will be based on the applicant's peak demand during the calendar year 2008 or the amount requested, whichever is less.
3. An allottee will have the right to purchase power from Western only upon execution of an electric service contract between Western and the allottee and satisfaction of all conditions in that contract.
4. Eligible Native American entities will receive greater consideration for an allocation of up to 65 percent of their peak load in calendar year 2008.

General Criteria and Contract Principles

Western will apply the following General Criteria and Contract Principles to all contracts executed under the Marketing Plan.

1. Electric service contracts shall be executed within 6 months of a contract offer unless otherwise agreed to in writing by Western.
2. Allocation percentages provided for in the Marketing Plan and the electric service contracts shall be subject to adjustment.

3. All power supplied by Western will be delivered pursuant to a scheduling arrangement.

4. All power will be provided on a take-or-pay basis. All costs associated with the products and services provided including costs associated with ancillary services, Custom Products, and transmission will be passed on to the customer(s) using the product or service.

5. Contracts shall require a written commitment to a percentage of the Base Resource on or before June 30, 2011, and the Custom Product on or before December 31, 2012. Western may extend the final commitment dates for the Base Resource or Custom Product.

6. Contracts will include a clause specifying criteria that customers must meet on a continuous basis to be eligible to receive electric service from Western.

7. Upon request, Western shall provide or assist each new and existing customer in obtaining transmission arrangements for delivery of power marketed under this Marketing Plan; nonetheless, each entity is ultimately responsible for obtaining its own delivery arrangements to its load. Transmission service over the CVP system will be provided in accordance with Section VII of the Marketing Plan.

8. Contracts shall provide for Western to furnish electric service effective January 1, 2015, through December 31, 2024.

9. Specific products and services may be provided for periods of time as agreed to in the electric service contract.

10. Contracts shall incorporate Western's standard provisions for electric service contracts, integrated resource plans, and General Power Contract Provisions as determined by Western.

11. Contracts will include a clause that allows Western to reduce or rescind a customer's allocation percentage, upon 90-days notice, if Western determines that (1) the customer is not using this power to serve its own loads, except as otherwise specified in Section III of the Marketing Plan or (2) the allocation amounts are consistently greater than the customer's maximum peak load.

12. Any power not under contract may be allocated at any time at Western's sole discretion or sold as deemed appropriate by Western.

13. Contracts may include a clause providing for alternative funding arrangements including net billing, bill crediting, reimbursable financing, and advance payment.

Call for 2015 Resource Pool Applications:

Applications for Power

This **Federal Register** notice formally requests applications from qualified preference entities wishing to purchase power from SNR. An application is made by submitting the APD form so Western will have a uniform basis upon which to evaluate the applications. To be considered, applicants must submit a completed APD application form by the deadline specified in the **DATES** section above. To ensure full consideration is given to all applicants, Western will not consider requests for power or applications submitted before publication of this **Federal Register** notice or after the deadlines specified in the **DATES** section.

Applicant Profile Data

The APD form below is approved by the Office of Management and Budget under Control No. 1910–5136. APD forms are available on Western's web page at *http://www.wapa.gov/sn/marketing/2015ResourcePool.asp* or by request to the person listed in the **FOR FURTHER INFORMATION CONTACT** section above. Applicants are encouraged to use the APD form provided on the Web site.

Please provide all information requested on the APD form. Please indicate if the requested information is not applicable or available. Western will request, in writing, additional information from any applicant whose application is deficient. The applicant will have 10 business days from the postmark date on Western's request to provide the information. In the event an applicant fails to provide sufficient information to allow Western to make a determination regarding eligibility, the application will not be considered.

All items of information in the APD form should be answered as if prepared by the entity/organization seeking the allocation of Federal power.

Applicant Profile Data Form

1. Applicant Information. Please provide the following:

a. Applicant's (entity/organization requesting an allocation) name and address:

Applicant's Name:	
Address:	
City:	
State:	
Zip:	

b. Person(s) representing applicant:

Contact Person (Name & Title):.	
Address:	
City:	
State:	
Zip:	
Telephone:	
Fax:	
E-mail Address:	

c. Type of entity/organization:

- ☐ Federal Agency
- ☐ Irrigation/Water District
- ☐ Municipality
- ☐ Native American Tribe
- ☐ Public Utility District
- ☐ Rural Electric Cooperative
- ☐ State Agency
- ☐ Other, please specify

d. Parent entity/organization of applicant, if any:

e. Name of the applicant's member organizations, if any: *(Separated by commas)*

f. Applicable law under which the applicant was established:

g. Applicant's geographic service area (if available, please submit a map of the service area and indicate the date prepared):

h. Provide the date the applicant attained utility status, if applicable. 10 CFR 905.35 defines utility status to mean ''that the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase power from Western on a wholesale basis for resale to retail customers.'':

i. Describe the entity/organization that will interact with Western on contract and billing matters:

2. Applicant's Loads:

a. If applicable, provide the number and type of customers served (e.g., residential, commercial, industrial, military base, agricultural):

CUSTOMER TYPE AND NUMBER

	Residential	Commercial	Industrial	Military	Agriculture	Other
Number of customers ..... If not applicable, explain why:						

b. Provide the actual monthly maximum demand (kilowatts) and energy use (kilowatt-hours) experienced in calendar year 2008:

CALENDAR YEAR 2008

	January	February	March	April	May	June
Demand *(kilowatts)* ..... Energy *(kilowatt-hours)*						

	July	August	September	October	November	December
Demand *(kilowatts)* ..... Energy *(kilowatt-hours)*						

c. Describe any factors or conditions which may significantly change peak demands or load duration or profile curves in the next 5 years:

3. Applicant's Resources. Please provide the following information:

a. A list of current power supplies, if applicable, including the applicant's own generation as well as purchases from others. For each supply, provide the resource name, capacity supplied, and the resource's location:

b. For each power supplier, provide a description and status of the power supply contract (including the termination date):

c. For each power supplier, provide the types of power:

☐ Power supply is on a firm basis.

☐ Power supply is not on a firm basis. Please explain:

4. Transmission:

a. Points of delivery—Provide the requested point(s) of delivery on Western's transmission system (or a third party's transmission system), the voltage of service required, and the capacity desired, if applicable:

b. Transmission arrangements—Describe the transmission arrangements necessary to deliver firm power to the requested points of delivery. Include a brief description of the applicant's transmission and distribution system including major interconnections. Provide a single-line drawing of applicant's system if one is available:

c. Describe whether the applicant owns and operates its own electric utility system or applicant's ability to receive and use Federal power as of January 1, 2014:

5. Other Information:

The applicant may provide any other information pertinent to receiving an allocation:

6. Signature:

By signing below, I certify the information which I have provided is true and correct to the best of my information, knowledge and belief. Electronically submitted applications must contain an electronic signature, or in the alternative, the signature page with a signature should be mailed via the U.S. Postal Service or mailed electronically to *2015RPApps@wapa.gov.*

Western requires the signature and title of an appropriate official who is able to attest to the validity of the APD and who is authorized to submit the request for an allocation.

Signature _____

Title _____

Western has obtained Office of Management and Budget Clearance Number 1910–5136 for collection of the above information. The APD form must be signed by the appropriate official who is able to attest to the validity of the information submitted and who is authorized to submit the application.

Contracting Process

Western will begin the contracting process with the allottees after publishing the final allocations in the **Federal Register**, tentatively scheduled for August 2010. Western will offer a prototype contract for power allocated under the Final 2015 Resource Pool Allocations. Allottees will be required to execute a contract within 6 months of the contract offer. Electric service contracts will be effective upon Western's signature, and service will begin on January 1, 2015.

Recordkeeping Requirements

If Western accepts an application and the applicant receives an allocation of Federal power, the applicant must keep all APDs for a period of 3 years after signing a contract for Federal power. There is no recordkeeping requirement for unsuccessful applicants who do not receive an allocation of Federal power.

Authorities

SNR's 2004 Power Marketing Plan, published in the **Federal Register** (64 FR 34417) on June 25, 1999, was established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101–7352); the Reclamation Act of June 17, 1902 (ch. 1093, 32 Stat. 388) as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485(c)); and other acts specifically applicable to the projects involved. This action falls within the Marketing Plan and, thus, is covered by the same authority.

Regulatory Procedure Requirements:

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*), Council on Environmental Quality NEPA implementing regulations (40 CFR parts 1500–1508), and DOE NEPA

implementing regulations (10 CFR part 1021), Western completed an Environmental Impact Statement (EIS) on its Energy Planning and Management Program. The Record of Decision was published in the **Federal Register** (60 FR 53181, October 12, 1995). Western also completed the 2004 Power Marketing Program EIS (2004 EIS), and the Record of Decision was published in the **Federal Register** (62 FR 22934, April 28, 1997). The Marketing Plan falls within the range of alternatives considered in the 2004 EIS. This NEPA review identified and analyzed environmental effects related to the Marketing Plan. This action falls within the Marketing Plan and, thus, is covered by the 2004 EIS.

Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*), Western has received approval from the Office of Management and Budget for the collection of customer information in this rule, under control number 1910–5136, which expires on September 30, 2011.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this **Federal Register** notice by the Office of Management and Budget is required.

Dated: May 15, 2009.

Timothy J. Meeks,

Administrator.

[FR Doc. E9–12919 Filed 6–2–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP09–610–000]

Shell Energy North America (US), L.P.: Complainant v. Rockies Express Pipeline Company and Sempra Rockies Marketing, LLC: Respondents; Notice of Complaint

May 27, 2009.

Take notice that on May 26, 2009, pursuant to section 206 of the Rules and Practice and Procedure, 18 CFR 385.206 (2008) and section 5 of the Natural Gas Act, 15 U.S.C. 717d, Shell Energy North America (US), L.P. (Complainant) filed a formal complaint against Rockies Express Pipeline Company (REX) and Sempra Rockies Marketing, LLC (SRM) disputing its contract rate for service from Opal, Wyoming to Zone 3 on the REX system.

The Complainant certifies that copies of the complaint have been served on the representatives for REX and SRM.

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 pm Eastern Time on June 15, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12862 Filed 6–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG09–19–000; EG09–20–000; EG09–23–000; EG09–24–000; EG09–25–000; EG09–28–000; EG09–29–000; EG09–30–000; EG09–31–000; EG09–32–000; EG09–33–000]

Hay Canyon Wind LLC; PowerSmith Cogeneration Project, LP; TXC Green Power LLC; Evergreen Wind Power V, LLC; EcoGrove Wind, LLC; RPL Holdings, Inc.; Reliant Energy Florida, LLC; High Lonesome Mesa, LLC; Saranac Power Partners, L.P.; EC&R Panther Creek Wind Farm III, LLC; Windy Flats Partners, LLC; Notice of Effectiveness of Exempt Wholesale Generator Status

May 27, 2009.

Take notice that during the month of April 2009, the status of the above-captioned entities as Exempt Wholesale Generators Companies became effective by operation of the Commission's regulations 18 CFR 366.7(a), except for Docket Nos. EG09–19–000 and EG09–20–000, which became effective in February 2009; and Docket Nos. EG09–23–000, EG09–24–000, and EG09–25–000, which became effective in March 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12864 Filed 6–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Representative Average Unit Costs of Energy

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the U.S. Department of Energy (DOE) is forecasting the representative average unit costs of five residential energy sources for the year 2009 pursuant to the Energy Policy and Conservation Act. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene.

DATES: The representative average unit costs of energy contained in this notice will become effective July 6, 2009 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7892, *Mohammed.Khan@ee.doe.gov.*

Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–7432, *Francine.pinto@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Section 323 of the Energy Policy and Conservation Act (Act) requires that DOE prescribe test procedures for the measurement of the estimated annual operating costs or other measures of energy consumption for certain consumer products specified in the Act. (42 U.S.C. 6293(b)(3)) These test procedures are found in Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B.

Section 323(b)(3) of the Act requires that the estimated annual operating costs of a covered product be calculated from measurements of energy use in a representative average use cycle or period of use and from representative average unit costs of the energy needed to operate such product during such cycle. (42 U.S.C. 6293(b)(3)) The section further requires that DOE provide information to manufacturers regarding the representative average unit costs of energy. (42 U.S.C. 6293(b)(4)) This cost information should be used by manufacturers to meet their obligations under section 323(c) of the Act. Most notably, these costs are used to comply with Federal Trade Commission (FTC) requirements for labeling. Manufacturers are required to use the revised DOE representative average unit costs when the FTC publishes new ranges of comparability for specific covered products, 16 CFR part 305. Interested parties can also find information covering the FTC labeling requirements at *http://www.ftc.gov/appliances.*

DOE last published representative average unit costs of residential energy in a **Federal Register** notice entitled, ''Energy Conservation Program for Consumer Products: Representative Average Unit Costs of Energy'', dated March 3, 2008 (73 FR 11406). Effective July 6, 2009, the cost figures published on March 3, 2008, will be superseded by the cost figures set forth in this notice.

DOE's Energy Information Administration (EIA) has developed the 2009 representative average unit after-tax costs found in this notice. The representative average unit after-tax costs for electricity, natural gas, No. 2 heating oil, and propane are based on simulations used to produce the March 2009, EIA *Short-Term Energy Outlook.* (EIA releases the *Outlook* monthly.) The representative average unit after-tax cost for kerosene is derived from its price relative to that of heating oil, based on the 2003–2007 averages for these two fuels. The source for these price data is the February 2009 *Monthly Energy Review* DOE/EIA–0035(2009/02). The *Short-Term Energy Outlook* and the *Monthly Energy Review* are available on the EIA Web site at *http://www.eia.doe.gov.* For more information on the two sources, contact the National Energy Information Center, Forrestal Building, EI–30, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8800, e-mail: *infoctr@eia.doe.gov.*

The 2009 representative average unit costs under section 323(b)(4) of the Act are set forth in Table 1, and will become effective July 6, 2009. They will remain in effect until further notice.

Issued in Washington, DC, on May 26, 2009.

Steven G. Chalk,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

TABLE 1—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES

[2009]

Type of energy	Per million Btu[1]	In commonly used terms	As required by test procedure
Electricity	$33.41	11.40¢/kWh[2,3]	$.1140/kWh
Natural Gas	11.12	$1.112/therm[4] or $11.44/MCF[5,6]	.00001112/Btu
No. 2 Heating Oil	16.22	$2.25/gallon[7]	.00001622/Btu
Propane	21.02	$1.92/gallon[8]	.00002102/Btu
Kerosene	15.63	$2.11/gallon[9]	.00001563/Btu

Sources: U.S. Energy Information Administration, *Short-Term Energy Outlook* (March 2009) and *Monthly Energy Review* (February 2009).

[1] Btu stands for British thermal units.

[2] kWh stands for kilowatt hour.

[3] 1 kWh = 3,412 Btu.

[4] 1 therm = 100,000 Btu. Natural gas prices include taxes.

[5] MCF stands for 1,000 cubic feet.

[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,029 Btu.

[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.

[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.

[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. E9–12913 Filed 6–2–09; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF08–24–000]

Calais LNG Project Company, LLC; Supplemental Notice of Intent to Prepare an Environmental Impact Statement for the Calais LNG Project and Request for Comments on Environmental Issues Related to the Potential Expansion of the Maritimes & Northeast Pipeline System

May 27, 2009.

As previously noticed on November 20, 2008, and supplemented herein, the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss environmental impacts that could result from construction and operation of the Calais Liquefied Natural Gas (LNG) Project planned by the Calais LNG Project Company, LLC (Calais LNG). The EIS will be used by the Commission in its decision making process to determine whether the project is in the public convenience and necessity.

The planned Calais LNG Project would consist of an onshore LNG import and storage terminal located just north of Ford Point on the St. Croix River, about 6 miles southeast of the Town of Calais in Washington County, Maine; and about 20 miles of natural gas sendout pipeline between the LNG terminal and an interconnection with the existing Maritimes & Northeast Pipeline L.L.C.'s (M&NE) pipeline system near the Town of Baileyville, Maine. The M&NE system currently does not have sufficient capacity to transport the natural gas that would be supplied by the LNG terminal. Therefore, if the Calais LNG Project is authorized and placed into service, the M&NE system would require expansion in Maine, Massachusetts, and New Hampshire.

This Supplemental Notice of Intent (NOI) discloses the potential facilities that are anticipated to expand M&NE's system, based on information provided to Calais LNG by M&NE. Although M&NE is not proposing to construct these facilities and does not have an application before the FERC, these expanded M&NE facilities are likely a necessary part of the project. An analysis of the impacts of these facilities will be included in the EIS being prepared for the Calais LNG facility. This Supplemental NOI is being issued to notify the public about the anticipated M&NE system expansion and to request comments regarding the possible environmental impact of those facilities. Your input will help determine what issues need to be evaluated in the EIS regarding the M&NE system expansion. Please note that the scoping period for this supplemental NOI will close on June 29, 2009.

This notice is being sent to the Commission's current environmental mailing list for this project, which includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Summary of the Anticipated M&NE Expansion

The following facilities have been identified by M&NE as necessary to accommodate the gas volumes to be delivered by Calais LNG. A summary of the Calais LNG Project was included in the NOI issued on November 20, 2008, and the scoping period closed on December 22, 2008. This NOI may also be accessed via the FERC eLibrary. Instructions about using eLibrary are included in the Additional Information section on page 7.

Pipeline Looping

Approximately 233.4 miles of 36-inch-diameter pipeline looping [1] is anticipated in or adjacent to the existing M&NE right-of-way (ROW) or other nearby utility or road ROWs, as follows:

- *Eliot Loop*—21.1 miles of 36-inch-diameter pipeline adjacent to the existing 30-inch-diameter Joint Mainline (milepost [MP] 31.1 in Rockingham County, New Hampshire to MP 51.2 in York County, Maine);
- *Westbrook Loop*—41.1 miles of 36-inch-diameter pipeline adjacent to the existing 30-inch-diameter Joint Mainline (MP 60.3 to MP 101.4 in Cumberland County, Maine);
- *Richmond Loop*—35.4 miles of 36-inch-diameter pipeline adjacent to the existing 24-inch-diameter Phase II Mainline (MP 107.9 in Cumberland County, Maine to MP 143.4 in Sagadahoc County, Maine);
- *Searsmont Loop*—35.5 miles of 36-inch-diameter pipeline adjacent to the existing 24-inch-diameter Phase II Mainline (MP 152.0 in Kennebec County, Maine to MP 185.5 in Waldo County, Maine);
- *Brewer Loop*—34.2 miles of 36-inch-diameter pipeline adjacent to the existing 24-inch-diameter Phase II Mainline (MP 191.6 in Waldo County, Maine to MP 225.8 in Penobscot County, Maine);
- *WC Ridge Loop*—35.2 miles of 36-inch-diameter pipeline adjacent to the existing 24-inch-diameter Phase II Mainline (MP 230.8 in Penobscot County, Maine to MP 266.0 in Hancock County, Maine); and
- *Baileyville Loop*—30.9 miles of 36-inch-diameter pipeline adjacent to the existing 24-inch-diameter Phase II Mainline (MP 271.3 in Washington County, Maine to MP 302.2 in Washington County, Maine).

Nearly all 233.4 miles of the required looping are in or adjacent to the existing Joint Mainline or Phase II Mainline ROW or other utility or road ROWs. M&NE's primary goal would be to align, as much as possible, the new looping parallel to the existing Phase II Mainline and Joint Mainline with a 25-foot offset. The side that the loops would be located on would vary due to residential impacts, screening, land use, environmental or construction issues where known to exist.

Compressor Station Facilities [2]

A new meter station would be required at the tie-in of the Calais LNG sendout pipeline with the M&NE's system in Baileyville, Maine. Modifications to the existing meter station in Dracut, Massachusetts would be necessary, as well as uprating the maximum allowable operating pressure of the existing Joint Pipeline Facilities from Westbrook, Maine to Dracut, Massachusetts from 1,440 to 1,600 pounds per square inch gauge. Compression requirements for the pipeline expansion would likely include adding a total of 63,000 horsepower of compression to six existing compressor stations. These compressor stations include the Eliot Compressor Station (MP 51.2), Westbrook Compressor Station (MP 101.4), Richmond Compressor Station (MP 147.3), Searsmont Compressor

[1] A pipeline loop is a segment of pipe that is installed adjacent to or in the vicinity of an existing pipeline and connected to the existing pipeline at both ends. A loop increases the volume of gas that can be transported through that portion of the system.

[2] Construction of the Westbrook, Searsmont, Brewer and Woodchopping Ridge Compressor Stations was recently completed as part of Maritimes' Phase IV Project, as described in Docket No. CP06–335–000. These compressor stations were placed into service in January 2009.

Station (MP 185.5), Brewer Compressor Station (MP 225.8), and WC Ridge Compressor Station (MP 266.1). M&NE would install one new Taurus 70 natural gas-driven turbine compressor at each of these stations. Restaging and repiping the existing compressor unit and installation of gas cooling would also be required at each station.

A map depicting the expansion of the M&NE facilities downstream of the interconnection with Calais LNG is included in appendix 1.[3]

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [4] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this Supplemental NOI, the Commission staff requests public comments on the scope of the issues to address in the EIS. All comments received will be considered during the preparation of the EIS.

In the EIS, we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species;
- Hazardous waste; and
- Public safety.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's Pre-filing Process. The purpose of the Pre-filing Process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. As part of our Pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EIS.

Our independent analysis of the issues will be in the EIS. The draft EIS will be mailed to those on our environmental mailing list (see discussion of how to remain on our mailing list on page 6). A 45-day comment period will be allotted for review of the draft EIS. We will consider all timely comments and revise the document, as necessary, before issuing a final EIS. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

With this Supplemental NOI, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section below. Currently, the U.S. Coast Guard; U.S. Army Corps of Engineers; Environmental Protection Agency; U.S. Department of Commerce; National Oceanic and Atmospheric Administration; and the State of Maine Department of Environmental Protection have expressed their intention to participate as a cooperating agency in the preparation of the EIS to satisfy their NEPA responsibilities related to this project.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the M&NE pipeline expansion for the Calais LNG Project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. Your comments should focus on the potential environmental effects, reasonable alternatives (including alternative facility sites and pipeline routes), and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before June 29, 2009.

For your convenience, there are three methods which you can use to submit your written comments to the Commission. In all instances please reference the project docket number PF08–24–000 with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or*efiling@ferc.gov.*

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* A Quick Comment is an easy method for interested persons to submit text-only comments on a project.

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''*Sign up''* or*''eRegister.''* You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing.''

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1. Reference Docket No. PF08–24–000 on the original and both copies.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project. This includes all landowners who are potential ROW grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities (as defined in the Commission's regulations).

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

[3] The appendices referenced in this notice are not being printed in the **Federal Register,** but were sent to all those receiving this notice in the mail. Copies of all appendices are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the end of this notice.

[4] ''We'', ''us'', and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

Becoming an Intervenor

Once Calais LNG files an application with the Commission, you may want to become an ''intervenor'', which is an official party to the proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''eFiling'' link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application for the project is filed with the Commission.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, select ''General Search'' and enter the docket number excluding the last three digits (*i.e.,* PF08–24) in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or by e-mail at *FercOnlineSupport@ferc.gov.* The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, Calais LNG has established a Web site for this project at *http://www.calaislng.com.* The Web site includes a project overview, status, potential impacts and mitigation, and answers to frequently asked questions. You can also request additional information by calling Calais LNG directly at 207–214–7074 or visiting the Calais LNG office at 421 Main Street, Calais, Maine.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12869 Filed 6–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration;

Big Eddy-Knight Transmission Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of floodplain and wetlands involvement.

SUMMARY: BPA intends to prepare an EIS in accordance with the National Environmental Policy Act (NEPA) on the construction, operation, and maintenance of a proposed 500-kilovolt (kV) transmission line and substation. The project would be located in Wasco County, Oregon and Klickitat County, Washington. The new BPA transmission line would extend generally northeast from BPA's existing 500-kV Big Eddy Substation in The Dalles, Oregon, to a new BPA 500-kV substation proposed to be connected to BPA's existing Wautoma-Ostrander 500-kV transmission line approximately 4 miles northwest of Goldendale, Washington. The proposed BPA substation would be called Knight Substation. BPA is considering three routing alternatives for the proposed transmission line; portions of all three routes parallel existing BPA lines in the area. The lengths of the routing alternatives range from about 26 to 28 miles. The proposed Big Eddy-Knight transmission line is needed to increase transmission capacity to respond to requests for transmission service in this area.

With this Notice of Intent, BPA is initiating the public scoping process for the EIS. BPA is requesting comments about potential environmental impacts that it should consider as it prepares the EIS for the proposed project, as well as comments on the proposed routes for the transmission line, and suggestions about other route options that may meet the technical requirements of the transmission system.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment to avoid or minimize potential harm to or within any affected floodplains and wetlands. The assessment will be included in the EIS.

DATES: Written scoping comments are due to the address below no later than July 21, 2009. Comments may also be made at the EIS scoping meetings to be held on June 30, 2009 and July 1, 2009 at the addresses below.

ADDRESSES: Send letters with comments and suggestions on the proposed scope of the Draft EIS, and requests to be placed on the project mailing list, to Bonneville Power Administration, Public Affairs Office—DKE–7, P.O. Box 14428, Portland, OR, 97293–4428, or by fax to (503) 230–3285. You also may call BPA's toll free comment line at (800) 622–4519 and leave a message (please include the name of this project), or submit comments online at *http://www.bpa.gov/comment.* BPA will post all comment letters in their entirety on BPA's Web site at *http://www.bpa.gov/comment.*

On Tuesday, June 30, 2009, an open-house style scoping meeting will be held from 4 p.m. to 7 p.m. at the Shilo Inn Suites Hotel in The Dalles, Oregon. On Wednesday, July 1, 2009, a scoping meeting will be held from 4 p.m. to 7 p.m. at the Goldendale High School in Goldendale, Washington. At these informal meetings, we will provide maps and other information about the project and have members of the project team available to answer questions and accept oral and written comments. You may stop by anytime during the open house.

FOR FURTHER INFORMATION CONTACT: Stacy Mason, Environmental Coordinator, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 503–230–5455; or e-mail *slmason@bpa.gov.* You may also contact Steve Prickett, Project Manager, Bonneville Power Administration—TNP–3, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 360–619–6379; or e-mail *slprickett@bpa.gov.* Additional information can be found at BPA's Web site: *http://www.efw.bpa.gov/environmental_services/nepadocs.aspx,* click on ''Project Reviews—Active,'' then use the drop-down box and click on Big Eddy-Knight Transmission Project.

SUPPLEMENTARY INFORMATION: In 2008, BPA conducted a Network Open Season (NOS) process to help manage its list of requests for long-term transmission service. During the NOS process, utilities and power generators

(including wind generators and power marketers) requested the use of BPA's transmission system to transmit their power. To determine if BPA could offer the service requested, BPA studied the transmission system and identified where existing capacity was available and where the system needed upgrades. The studies found that there was not enough available transmission capacity to accommodate all requests for long-term service from the east side of the Cascade Mountains along the Oregon/Washington border, to load centers west of the Cascades, and to major transmission lines serving California. Wind generation facilities built and proposed in the region have greatly increased the amount of power being produced on the east side of the Cascade Mountains. Further studies revealed that building a new 500-kV line from BPA's existing Big Eddy Substation in Oregon to a point on BPA's existing Wautoma-Ostrander 500-kV transmission line in Washington would allow BPA to accommodate the requests for transmission service in this area.

BPA must respond to these requests for transmission service under its Open Access Transmission Tariff. This tariff, which is generally consistent with the Federal Energy Regulatory Commission's *pro forma* open access tariff, has procedures that provide access to BPA's transmission system for all eligible customers, consistent with all BPA requirements (including the availability or development of sufficient transmission capacity) and subject to an environmental review under NEPA. The proposed Big Eddy-Knight Transmission Line Project would respond to these requests for transmission service. BPA, therefore, will prepare an EIS under NEPA to assist the agency as it decides whether to build the proposed project, and if a decision is made to build a line, which alternative transmission line route should be constructed.

BPA will be the lead agency for preparation of the EIS. In furtherance of existing cooperative agreements between BPA and the States of Washington and Oregon, the Washington Energy Facility Site Evaluation Council (Washington EFSEC) and the Oregon Energy Facility Siting Council (Oregon EFSC) also will participate in preparation of the EIS. Among other things, these State agencies will assist BPA in evaluating alternative transmission line routes and identifying State interests that should be addressed in the EIS. In addition, cooperating agencies for the EIS may be identified as the proposed project proceeds through the NEPA process.

Alternatives Proposed for Consideration. BPA is considering three routing alternatives for evaluation in the EIS. The routing alternatives use a combination of existing BPA transmission right-of-way and new right-of-way and are about 26–28 miles long. BPA proposes to use lattice steel towers for construction of the transmission line.

All routing alternatives would originate at BPA's Big Eddy Substation, near The Dalles, Oregon, and would terminate at a new BPA 500-kV Knight Substation located under and connected to BPA's existing BPA Wautoma-Ostrander 500-kV transmission line approximately 4 miles northwest of Goldendale, Washington. The following describes the general location of the three routing alternatives:

- *West Alternative:* This route would extend northwest from Big Eddy Substation following existing vacant BPA right-of-way to and across the Columbia River. The line would then head east, and then north to parallel an existing BPA 115-kV H-frame wood-pole transmission line. The proposed line would angle northeast in new right-of-way adjacent to the wood pole line for about 12 miles. The proposed line would continue northeast in new right-of-way for about 4 miles before nearing two existing lattice steel lines (230 kV and 500 kV). The proposed line would parallel these existing lines eastward for about 3 miles to the proposed Knight Substation site. This routing alternative is about 26 miles long.
- *Middle Alternative:* From Big Eddy Substation, this route would extend east and slightly north in existing right-of-way next to an existing BPA 230-kV lattice-steel transmission line for about 7 miles before crossing the Columbia River. The line would cross the river just west of the existing line and follow it for about 1.5 miles before heading north in new right-of-way. The line would then head to the proposed Knight Substation site, generally running north for about 15 miles with one jog east along an existing BPA 115-kV wood-pole line. This routing alternative is about 26 miles long.
- *East Alternative:* This route would follow the same route as the Middle Routing Alternative, but instead of heading north on the Washington side of the river, the East Routing Alternative would continue east next to two existing lattice-steel lines (230 kV and 345 kV) for an additional 4 miles before turning north. The line would then generally run north for 15 miles to the proposed Knight Substation site. This routing alternative is about 28 miles long.

BPA is also considering the No Action Alternative, that is, not building the transmission line and substation. Other alternatives may be identified through the scoping process.

Public Participation and Identification of Environmental Issues. The potential environmental issues identified for most transmission line projects include land use, socioeconomics, cultural resources, visual resources, electric and magnetic field effects, sensitive plants and animals, soil erosion, wetlands, floodplains, and fish and water resources. The transmission line alternatives being considered also cross portions of the Columbia River Gorge National Scenic Area. BPA has established a 45-day scoping period during which tribes, affected landowners, concerned citizens, special interest groups, local and federal governments, and any other interested parties are invited to comment on the scope of the proposed EIS, including potential routing alternatives to be considered and environmental impacts to be evaluated. Scoping will help BPA ensure that a full range of issues related to this proposal is addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project. When completed, the Draft EIS will be circulated for review and comment, and BPA will hold public meetings to answer questions and receive comments. BPA will consider and respond to comments received on the Draft EIS in the Final EIS. The Final EIS is expected to be published in winter 2010–11. BPA's decision will be documented in a Record of Decision that will follow the Final EIS.

Issued in Portland, Oregon, on May 27, 2009.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. E9–12915 Filed 6–2–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1181–000]

Hoosier Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

May 27, 2009.

This is a supplemental notice in the above-referenced proceeding of Hoosier Wind, LLC's application for market-

based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the Applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is June 17, 2009.

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-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12866 Filed 6–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1146–000]

Lafarge Midwest, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

May 27, 2009.

This is a supplemental notice in the above-referenced proceeding of Lafarge Midwest, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 17, 2009.

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.

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Kimberly D. Bose,

Secretary.

[FR Doc. E9–12865 Filed 6–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at Southwest Power Pool Board of Directors Meeting

May 27, 2009.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meeting of the Southwest Power Pool (SPP) Board of Directors, as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

SPP Board of Directors—Educational Meeting

June 8, 2009 (12 p.m.–5:30 p.m.).
June 9, 2009 (8 a.m.–5 p.m.).

University of Arkansas at Little Rock, Bailey Center, 2801 South University Avenue, Little Rock, AR 72204, 501–683–7208.

The discussions may address matters at issue in the following proceedings:

Docket No. ER06–451, *Southwest Power Pool, Inc.*
Docket Nos. ER07–319 and EL07–73, *Southwest Power Pool, Inc.*
Docket No. ER07–371, *Southwest Power Pool, Inc.*
Docket No. ER07–1255, *Southwest Power Pool, Inc.*
Docket No. ER08–923, *Southwest Power Pool, Inc.*
Docket No. ER08–1307, *Southwest Power Pool, Inc.*
Docket No. ER08–1308, *Southwest Power Pool, Inc.*
Docket No. ER08–1357, *Southwest Power Pool, Inc.*
Docket No. ER08–1358, *Southwest Power Pool, Inc.*
Docket No. ER08–1419, *Southwest Power Pool, Inc.*
Docket No. ER08–1516, *Southwest Power Pool, Inc.*
Docket No. EL08–80, *Oklahoma Corporation Commission.*
Docket No. ER09–35, *Tallgrass Transmission LLC.*
Docket No. ER09–36, *Prairie Wind Transmission LLC.*
Docket No. ER09–149, *Southwest Power Pool, Inc.*

Docket No. ER09–262, *Southwest Power Pool, Inc.*

Docket No. ER09–336, *Southwest Power Pool, Inc.*

Docket No. ER09–342, *Southwest Power Pool, Inc.*

Docket No. ER09–443, *Southwest Power Pool, Inc.*

Docket No. ER09–659, *Southwest Power Pool, Inc.*

Docket No. ER09–748, *Southwest Power Pool, Inc.*

Docket No. ER09–883, *Southwest Power Pool, Inc.*

Docket No. ER09–1039, *Southwest Power Pool, Inc.*

Docket No. ER09–1042, *Southwest Power Pool, Inc.*

Docket No. ER09–1055, *Southwest Power Pool, Inc.*

Docket No. ER09–1056, *Southwest Power Pool, Inc.*

Docket No. ER09–1057, *Southwest Power Pool, Inc.*

Docket No. ER09–1068, *Southwest Power Pool, Inc.*

Docket No. ER09–1080, *Southwest Power Pool, Inc.*

Docket No. ER09–1130, *Southwest Power Pool, Inc.*

Docket No. ER09–1140, *Southwest Power Pool, Inc.*

Docket No. ER09–1152, *Southwest Power Pool, Inc.*

Docket No. ER09–1172, *Southwest Power Pool, Inc.*

Docket No. ER09–1174, *Southwest Power Pool, Inc.*

Docket No. ER09–1177, *Southwest Power Pool, Inc.*

Docket No. ER09–1192, *Southwest Power Pool, Inc.*

Docket No. OA08–5 and EL09–40, *Southwest Power Pool, Inc.*

Docket No. OA08–60, *Southwest Power Pool, Inc.*

Docket No. OA08–61, *Southwest Power Pool, Inc.*

Docket No. OA08–104, *Southwest Power Pool, Inc.*

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12867 Filed 6–2–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division-Rate Order No. WAPA–144

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Transmission and Ancillary Services Rates.

SUMMARY: The Western Area Power Administration (Western) is proposing to update its rates for transmission and ancillary services for the Pick-Sloan Missouri Basin Program—Eastern Division (P-SMBP—ED). Current formula rates, under Rate Schedules UGP–NT1, UGP–FPT1, UGP–NFPT1, UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, and UGP–AS6 will expire on September 30, 2010. Western is also proposing to add a new rate schedule, Rate Schedule UGP–AS7, for Generator Imbalance Service. Western is proposing these rates to meet evolving and expanding transmission system and ancillary services requirements. Western will prepare a brochure that provides detailed information on the proposed rates to all interested parties. The proposed rates, under Rate Schedules UGP–NT1, UGP–FPT1, UGP–NFPT1, UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, and UGP–AS6, are scheduled to go into effect on January 1, 2010, and will remain in effect through December 31, 2014, or until superseded. The new rate schedule for Generator Imbalance Service, under Rate Schedule UGP–AS7, is scheduled to go into effect on the latter of January 1, 2010, or when Western's Open Access Transmission Tariff (OATT) is revised to provide for Generator Imbalance Service. If implemented, Rate Schedule UGP–AS7 will also remain in effect through December 31, 2014, or until superseded, to coincide with the other ancillary service rates in this rate order. Publication of this **Federal Register** notice begins the formal process for the proposed formula rates.

DATES: The consultation and comment period begins today and will end October 1, 2009. Western will present a detailed explanation of the proposed formula rates at a public information forum. The public information forum date is June 24, 2009, 9 a.m. to 12 p.m. CDT, Sioux Falls, South Dakota. Western will accept oral and written comments at a public comment forum. The public comment forum date is July 28, 2009, 9 a.m. to 12 p.m. CDT, Sioux Falls, South Dakota. Western will accept written comments any time during the consultation and comment period.

ADDRESSES: Written comments and/or requests to be informed of Federal Energy Regulatory Commission (FERC) actions concerning the rates submitted by Western to the FERC for approval should be sent to Robert J. Harris, Regional Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, e-mail *UGPISRate@wapa.gov.* Western will post information about the rate process on its Web site at *http://www.wapa.gov/ugp/rates/default.htm.* Western will post official comments received via letter and e-mail to its Web site after the close of the comment period. Western must receive written comments by the end of the consultation and comment period to ensure they are considered in Western's decision process. The public information forum location is the Holiday Inn, 100 West 8th Street, Sioux Falls, SD. The public comment forum location is the Holiday Inn, 100 West 8th Street, Sioux Falls, SD.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Cady-Hoffman, Rates Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, telephone (406) 247–7439, e-mail *cady@wapa.gov.*

SUPPLEMENTARY INFORMATION: The transmission facilities in the P–SMBP—ED are integrated with transmission facilities of Basin Electric Power Cooperative (Basin) and Heartland Consumers Power District (Heartland) such that transmission services are provided over an integrated transmission system, called the Integrated System (IS), and the rates are sometimes referred to as IS Rates. Western acts as the administrator of the IS and monitors service under the OATT.[1] As owners of the IS, Western, Basin, and Heartland may be referred to as IS Partners. The Deputy Secretary of Energy approved the current Rate Schedules UGP–FPT1, UGP–NFPT1, UGP–NT1, UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, and UGP–AS6 for P–SMBP—ED firm and non-firm transmission rates and ancillary services rates through September 30, 2010.[2] The current rate schedules contain formula-based rates that are recalculated

[1] Western's OATT was most recently approved by FERC in Docket No. NJ07–2–000, 119 FERC 61,329 (2007) and the FERC's delegated order issued on September 6, 2007, in Docket No. NJ07–2–001.

[2] Rate Order No. WAPA–122, 70 FR 55821, September 23, 2005, and the FERC confirmed and approved the rate schedules on May 30, 2006, under FERC Docket No. EF05–5031–000, 115 FERC 62,230.

annually. The proposed rates continue the formula-based approach and will be recalculated annually from financial and load information. Western intends for the proposed formula-based rates to go into effect January 1, 2010, and remain in effect through December 31, 2014. Annual recalculated rates are proposed go into effect on January 1, 2011, and annually on January 1 thereafter.

Proposed Change to Forward-Looking Formula Transmission Rates

Western proposes to change the implementation of the formula rates to recover transmission expenses and investments on a current (forward-looking), rather than a lagging basis. This will allow Western to more accurately match cost recovery with cost incurrence. Western will use projections to estimate transmission costs and load for the upcoming year in the annual recalculation of the Annual Transmission Revenue Requirement (ATRR). Western will ''true-up'' the cost estimates with Western's actual costs. This is a change in the manner in which the inputs for the revenue requirement are currently developed, rather than a change to the formula rate itself. Rates will continue to be recalculated every year. Revenue collected in excess of Western's actual net revenue requirement will be returned to customers through a credit against rates in a subsequent year. Actual revenues that are less than the net revenue requirement would likewise be recovered in a subsequent year. The true-up procedure would ensure that Western will recover no more and no less than the actual transmission costs for the year. For example, at the end of 2010, and as actual year-end financial data becomes available during 2011, the under or over collection of revenue during 2010 will be determined. When the rates are recalculated for implementation on January 1, 2012, the implemented rates will include an adjustment for revenue over or under collected in 2010.

Proposed Implementation of Transmission and Ancillary Services Rates on January 1

With the implementation of the applicable rates (resulting from this process) effective on January 1, 2010, Western proposes to change the date of the annual implementation of the recalculated rates for each applicable rate schedule to January 1, 2011, and January 1 of each year thereafter. In the past, annual implementation of the recalculation of the formula rates was effective annually on May 1. With the implementation date change from May 1 to January 1, the data used in the rate recalculation for the rates that will be effective on January 1will be made available for review and comment on or shortly after September 1 each year. Western proposes providing customers the opportunity to discuss and comment on the recalculated rates on or before October 31, 2010, and October 31 of subsequent years. This procedure will ensure that the data is available, interested parties are aware of the data used to calculate the rates, and will provide interested parties the opportunity to comment before the costs are collected through the formula rate.

Proposed Use of Revenue Requirement Calculation Templates

Western proposes to initiate the use of standard revenue requirement calculation templates for the annual rate recalculation to aid in the revenue requirement/rate recalculation and review processes. The revenue requirement templates will provide a standard format to gather and record required financial information from Western, Basin, Heartland, and Transmission Customers receiving facilities credits for facilities integrated with the IS. Entities submitting financial data may request the use of other or modified templates. However, once accepted, consistent use of the accepted template will be required for subsequent financial data submission for that entity. Western will review future requests to utilize other or modified templates for appropriateness and conduct a public process prior to granting approval for use.

Proposed Formula Rate for Network Transmission Service

The formula for calculating the Network Transmission Service rate is unchanged from Western's previously approved filing with the FERC. The change to a current year formula rate involves a change to the manner in which the inputs are developed rather than a change in the formula rate itself. The same ATRR is used for both network and point-to-point rates. The current methodology for determining the customers' charges for monthly Network IS Transmission Service is the product of the network customer's load ratio share times one-twelfth (1/12) of the annual network transmission revenue requirement. The network transmission revenue requirement is derived by annualizing the IS transmission investment and adding transmission-related annual costs, including operation, maintenance, interest, administrative and general costs, and depreciation. The annual costs are reduced by revenue credits for the Non-Firm Transmission Service. The load ratio share is based upon the network customer's hourly load coincident with the IS monthly transmission system peak minus the coincident peak for all IS Firm Point-to-Point Transmission Service plus the point-to-point reservations. The Network Transmission Service rate includes costs for Scheduling, System Control, and Dispatch (SSCD) Service needed to provide transmission service. A revenue requirement template will be used to calculate the ATRR utilizing the costs estimates as data inputs.

Proposed Formula Rate for Firm Point-to-Point IS Transmission Service

Western proposes no change in the rate formula for Firm Point-to-Point IS Transmission Service other than utilizing transmission cost projections as data inputs in the determination of the annual revenue requirement as described above. The proposed Firm Point-to-Point IS Transmission Service rate remains the annual revenue requirement required for IS transmission service less the non-firm revenue credits all divided by annual average transmission system monthly peak load and then divided again by 12 months. The Firm Point-to-Point rate includes the cost for SSCD Service needed to provide transmission service.

Proposed Formula Rate for Non-Firm Point-to-Point Transmission Service

Western proposes no change in the rate formula for Non-Firm Point-to-Point Transmission Service other than utilizing transmission cost projections as data inputs to determine the annual revenue requirement as described above. The Non-Firm Point-to-Point Transmission Service rate formula remains the monthly IS Firm Point-to-Point Transmission Service rate divided by 730 hours per month times 1000 mills per dollar.

Proposed Formula Rate for SSCD Service

Western proposes to continue the current formula-based rate methodology for SSCD Service, except that the formula will divide the annual revenue requirement for SSCD Service by the number of daily tags in the calculation year instead of dividing the annual revenue requirement by the number of daily schedules in the calculation year. This is a terminology change only. Schedules and tags have become synonymous in Western's Upper Great Plains Region, and therefore, calculating the SSCD Service rate with either as the

denominator will result in the same rate. The change of terminology provides consistency among Western's regions in describing the formula for SSCD Service.

Proposed Formula Rate for Reactive Supply and Voltage Control From Generation Sources Service

Western's current formula for Reactive Supply and Voltage Control from Generation Sources (RSVC) Service is determined by multiplying the total P–SMBP—ED generation net plant by the generation fixed charge rate. The annual cost is multiplied by the five (5) year average peak monthly percentage of Western's generation operating in a synchronous condenser mode to determine Western's reactive service revenue requirement. Western's, Basin's, Heartland's, and Missouri River Energy Services' annual costs for revenue requirements for RSVC Service are summed to get the total revenue requirement for this service. The RSVC rate is then derived by dividing the total annual revenue requirement by the load requiring reactive service. The annual cost is then divided by 12 months to obtain a monthly charge. In this formula, Western is only compensated for providing RSVC Service based upon the cost of Western's generation operating outside the 0.95 leading to 0.95 lagging power factor bandwidth, while Basin, Heartland, and Missouri River Energy Services are compensated based on costs for generation operating within this power factor bandwidth.

Western is proposing a change to its rate for RSVC Service by removing costs of any generation associated with operation within the bandwidth from the total revenue requirement for this service. Under Western's current rate, Western is not compensated for providing RSVC Service from its own generators operating inside the bandwidth, while non-Federal generators are receiving compensation for providing RSVC Service within the bandwidth. Western believes that both Federal and non-Federal generators should be treated comparably when they provide RSVC Service within the bandwidth. Therefore, Western is proposing discontinuing payment for all other generators providing RSVC Service within the 0.95 leading to 0.95 lagging power factor bandwidth.

Western will continue to collect its RSVC Service cost, for its generators operating within the bandwidth, in the firm power revenue requirement under the then appropriate firm power rate schedule and not from Transmission Customers under its OATT. Therefore, only Federal preference power customers will pay the RSVC costs of the Federal generators operating within the bandwidth. This change will result in transmission service customers paying for RSVC Service based only upon costs for generators operating outside the bandwidth. Excluding RSVC Service costs associated with generator operation within the bandwidth from the RSVC Service revenue requirement will require all other non-Federal generator owners to recover their RSVC Service costs, for operation within the bandwidth, elsewhere.

Western's Federal generation is required to operate in synchronous condenser mode (*i.e.,* outside the power factor bandwidth) to maintain system voltages and meet reliability criteria and therefore, consistent with the previous practice, Western will include its costs to provide RSVC Service for Federal generators operating outside the bandwidth. Western will also include costs associated with other non-Federal generators required to operate outside the power factor bandwidth to maintain system voltages and meet reliability criteria (*e.g.,* other generators that operate as synchronous condensers, or generators that are requested by Western to operate outside the bandwidth as noted in Western's generator interconnection procedures and agreements).

The following rate formula will apply: Western's total P–SMBP–ED generation net plant multiplied by the generation fixed charge rate (in percent) provides Western's annual cost. That annual cost is multiplied by the five (5) year average peak monthly percentage of Western's Federal synchronous condensing generation to determine Western's ''outside the bandwidth'' reactive service revenue requirement. Western's revenue requirement is then summed with any revenue requirement or costs incurred from other non-Federal generators required by Western to operate outside the bandwidth to provide the total annual revenue requirement for RSVC Service. This total annual revenue requirement is then divided by the total load (kWyear) in Western's Control Areas.[3] The annual cost is then divided by 12 months to obtain a monthly charge.

Proposed Formula Rate for Regulation and Frequency Response Service

Western proposes to continue the current formula-based rate methodology for Regulation and Frequency Response Service as described below. Regulation and Frequency Response Service in the east side of the Control Area is provided primarily by Oahe generation and in the west side of the Control Area by Fort Peck generation, both of which are United States Army Corps of Engineers (Corps) facilities. The Corps' generation fixed charge rate (in percent) is applied to Oahe and Fort Peck generation net plant investment producing an annual Corps generation cost for the Oahe and Fort Peck Power plants. This cost is divided by the capacity at the plants to derive a dollar per kilowatt amount for Oahe's and Fort Peck's installed capacity (kWyear). This dollar per kilowatt amount is then applied to the capacity of Oahe and Fort Peck generation reserved for Regulation and Frequency Response Service in the Control Area. Western's annual revenue requirement for Regulation and Frequency Response Service is determined by applying the dollar per kilowatt charge to the capacity used for Regulation and Frequency Response Service and adding cost associated with the purchase of power resources to provide Regulation and Frequency Response Service to support intermittent renewable resources as described below. The total Regulation and Frequency Response Service revenue requirement is determined by adding the Regulation and Frequency Response Revenue Requirement for Western, Basin, and Heartland. The Regulation and Frequency Response Service charge is then determined by dividing the total revenue requirement by the IS Network Load in the Control Area (kWyear). The annual cost is then divided by 12 months to obtain a monthly charge.

Western supports the installation of renewable sources of energy but recognizes that certain operational constraints exist in managing the significant fluctuations that are a normal part of their operation. When Western purchases power resources to provide Regulation and Frequency Response Service to intermittent renewable generation resources serving load within Western's Control Areas, costs for these

[3] Western has retained the term ''Control Area'' in this document maintaining consistency with usage of the term in the FERC's *pro forma* tariff and Western's current OATT.* As defined in Western's OATT, a Control Area is: An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to: (1) Match, at all times, the power output of the generators within the electric system(s) and capacity and energy purchased from entities outside the electric power system(s), with load within the electric power system(s); (2) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice; (3) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and (4) provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.

regulation resources will become part of Western's Regulation and Frequency Response Service charges. However, Western has marketed the maximum practical amount of power from each of its projects, leaving little or no flexibility for provision of additional power services. Consequently, Western will not regulate for the difference between the output of an intermittent generator located within Western's Control Area and a delivery schedule from that generator serving load located outside of Western's Control Area. Intermittent generators serving load outside Western's Control Area will be required to pseudo-tie or dynamically schedule their generation to another Control Area.

An intermittent resource, for the limited purpose of these Rate Schedules, is an electric generator that is not dispatchable and cannot store its fuel source and therefore cannot respond to changes in system demand or respond to transmission security constraints.

Proposed Rate for Energy Imbalance Service

Western proposes to revise its rate for Energy Imbalance Service to be consistent with rules promulgated by FERC to the extent consistent with Western's mission and permitted by law and regulations. Currently, penalty charges apply only to energy imbalances outside a 3-percent bandwidth (+/−1.5 percent deviation). The penalty for under deliveries outside the 3-percent bandwidth is 100 mills/kWh while over deliveries outside the bandwidth are forfeited.

Western proposes that charges be modified and based on deviation bands as follows:

(i) Deviations within +/−1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of Transmission Customer's scheduled transaction(s) will be netted on a monthly basis and settled financially, at the end of the month, at 100 percent of the average incremental cost for the month;

(ii) Deviations greater than +/−1.5 percent up to 7.5 percent (or greater than 2 MW up to 10 MW) of the scheduled transaction(s) to be applied hourly to any energy imbalance that occurs as a result of Transmission Customer's scheduled transaction(s) will be settled financially, at the end of each month, at 110 percent of incremental cost when energy taken by the Transmission Customer in a schedule hour is greater than the energy scheduled or 90 percent of incremental cost when energy taken by a Transmission Customer in a schedule hour is less than the scheduled amount; and

(iii) Deviations greater than +/−7.5 percent (or 10 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be settled financially, at the end of each month, at 125 percent of the highest incremental cost that occurs that day for energy taken by the Transmission Customer in a scheduled hour that is greater than the energy scheduled, or 75 percent of the lowest incremental cost that occurs that day when energy taken by a Transmission Customer is less than the scheduled amount.

Western's incremental cost will be based upon a representative hourly energy index or combination of indexes. The index to be used will be posted on Western's Open Access Same-Time Information System (OASIS) *http://www.oatioasis.com/wapa/index.html* at least 30 days prior to use for determining the Western incremental cost and will not be changed more often than once per year unless Western determines that the existing index is no longer a reliable price index.

Proposed Formula Rates for Operating Reserves Service—Spinning and Supplemental

Western proposes to continue the current formula-based rate methodology for Spinning Reserve Service and Supplemental Reserve Service (Reserve Services), except that Western will substitute the reserve requirement of the current reserve sharing group of which Western and the IS Partners are members or will substitute Western's and the IS Partners' own operating reserve requirement for the Mid-Continent Area Power Pool requirement.

Western's annual cost of generation for Reserve Services is determined by multiplying the generation fixed charge rate by the P–SMBP–ED generation net plant investment. The cost/kWyear is determined by dividing the annual cost of generation by the plant capacity. The capacity used for Reserve Services is determined by multiplying the peak IS load by the operating reserve requirement of either the current reserve sharing group of which Western and the IS Partners are members or their own operating reserve requirement. The cost/kWyear is multiplied by the capacity used for Reserve Services to obtain the annual revenue requirement. The annual revenue requirement for Reserve Services is divided by Western's peak transmission load to calculate the annual rate. The annual rate is then divided by 12 months to obtain a monthly rate. This rate design recovers only Western's revenue requirement associated with Reserve Services.

Western has no long-term reserves available beyond its own internal requirements. At a customer's request, Western will acquire needed resources and pass the costs on to the requesting customer. The customer is responsible to provide the transmission to deliver these reserves.

Proposed Rate for Generator Imbalance Service

Western proposes to add a Generator Imbalance Service rate in a new rate schedule, Rate Schedule UGP–AS7, to be consistent with rules promulgated by FERC to the extent consistent with Western's mission and permitted by law and regulations. However, if Western does not also implement a Generator Imbalance Service in a revised OATT, this rate will not be utilized.

Generator Imbalance Service is provided when a difference occurs between the output of a generator located within the Transmission Provider's Control Area and a delivery schedule from that generator to (1) another Control Area or (2) a load within the Transmission Provider's Control Area over a single hour. Western will offer this service, to the extent that it is feasible to do so from its own resources or from resources available to it, when Transmission Service is used to deliver energy from a generator located within its Control Area. The Transmission Customer must either purchase this service from Western or make alternative comparable arrangements, which may include use of non-generation resources capable of providing this service, to satisfy its Generator Imbalance Service obligation. Western may charge a Transmission Customer a penalty for either hourly generator imbalances under this Schedule UGP–AS7 or hourly energy imbalances under Rate Schedule UGP–AS4 for imbalances occurring during the same hour, but not both, unless the imbalances aggravate rather than offset each other.

Western supports the installation of renewable sources of energy but recognizes that certain operational constraints exist in managing the significant fluctuations that are a normal part of their operation. Western has marketed the maximum practical amount of power from each of its projects, leaving little or no flexibility for provision of additional power services. Consequently, Western will not regulate for the difference between

the output of an intermittent generator located within Western's Control Area and a delivery schedule from that generator serving load located outside of Western's Control Area. Intermittent generators serving load outside Western's Control Area will be required to pseudo-tie or dynamically schedule their generation to another Control Area. An intermittent resource, for the limited purpose of these schedules, is an electric generator that is not dispatchable and cannot store its fuel source and therefore cannot respond to changes in system demand or respond to transmission security constraints.

Western proposes to base the rate on deviation bands as follows:

(i) Deviations within +/−1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of Transmission Customer's scheduled transaction(s) will be netted on a monthly basis and settled financially, at the end of the month, at 100 percent of the average incremental cost;

(ii) Deviations greater than ±1.5 percent up to 7.5 percent (or greater than 2 MW up to 10 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of Transmission Customer's scheduled transaction(s) will be settled financially, at the end of each month. When energy delivered in a schedule hour from the generation resource is less than the energy scheduled, the charge is 110 percent of incremental cost. When energy delivered from the generation resource is greater than the scheduled amount, the credit is 90 percent of the incremental cost; and

(iii) Deviations greater than ±7.5 percent (or 10 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be settled at 125 percent of Western's highest incremental cost for the day when energy delivered in a schedule hour is less than the energy scheduled or 75 percent of Western's lowest daily incremental cost when energy delivered from the generation resource is greater than the scheduled amount. As an exception, an intermittent resource will be exempt from this deviation band and will pay the deviation band charges for all deviations greater than the larger of 1.5 percent or 2 MW.

Notwithstanding the foregoing, deviations from scheduled transactions in order to respond to directives by the Transmission Provider, a balancing authority, or a reliability coordinator shall not be subject to the deviation bands identified above and, instead, shall be settled financially, at the end of the month, at 100 percent of incremental cost. Such directives may include instructions to correct frequency decay, respond to a reserve sharing event, or change output to relieve congestion.

Western's incremental cost will be based upon a representative hourly energy index or combination of indexes. The index to be used will be posted on Western's OASIS *http://www.oatioasis.com/wapa/index.html* at least 30 days prior to use for determining the Western incremental cost and will not be changed more often than once per year unless Western determines that the existing index is no longer a reliable price index.

Legal Authority

Western is proposing transmission and ancillary service rates for the P–SMBP—ED in accordance with section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This section transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); and other acts that specifically apply to the projects involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985 (50 FR 37835).

After review of public comments, and possible amendments or adjustments, Western will recommend the Deputy Secretary of Energy approve the proposed rates on an interim basis.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that Western initiates or uses to develop the proposed rates are available for inspection and copying at the Upper Great Plains Regional Office, located at 2900 4th Avenue North, Billings, Montana. Many of these documents and supporting information are also available on its Web site under the ''2009 Transmission and Ancillary Services Rate Adjustment Process'' section located at *http://www.wapa.gov/ugp/rates/default.htm.*

Regulatory Procedure Requirements:

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347), Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and DOE NEPA Regulations (10 CFR part 1021), Western is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can be categorically excluded from those requirements.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: May 15, 2009.

Timothy J. Meeks,

Administrator.

[FR Doc. E9–12920 Filed 6–2–09; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2009–0078; FRL–8913–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Brownfields Program—Revitalization Grantee Reporting (Renewal); EPA ICR No. 2104.03, OMB Control No. 2050–0192

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 6, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2009–0078, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by email to *docket.superfund@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Rachel Lentz, Office of Brownfields and Land Revitalization, (5105–T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2745; fax number: 202–566–1476; e-mail address: *lentz.rachel@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 6, 2009 (74 FR 6286), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ –SFUND–2009–0078, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Superfund in the Docket EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–9744.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Brownfields Program—Revitalization Grantee Reporting (Renewal).

ICR numbers: EPA ICR No. 2104.03, OMB Control No. 2050–0192.

ICR Status: This ICR is scheduled to expire on July 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107–118) was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, and authorizes EPA to award grants to states, tribes, local governments, and other eligible entities to assess and clean up brownfields sites. EPA requires Brownfields program grant recipients to report information to EPA on the uses and accomplishments associated with the funded brownfields activities. EPA uses this information to meet Federal stewardship responsibilities to manage and track how program funds are being spent, to evaluate the performance of the Brownfields Cleanup and Redevelopment Program, to meet the Agency's reporting requirements under the Government Performance Results Act, and to report to Congress and other program stakeholders on the status and accomplishments of the grants program.

This ICR addresses the burden imposed on grant recipients that are associated with those reporting and recordkeeping requirements that are specific to grants awarded under the Small Business Liability Relief and Brownfields Revitalization Act. This ICR renewal modifies the annual reporting and recordkeeping burden under the previous ICR. The modified burden reflects an increase in the number of respondents subject to the reporting and recordkeeping requirements, and improvements to the reporting forms based on EPA's experience implementing the grant program. EPA is also modifying the reporting form to simplify and clarify the reporting requirements, which will improve the accuracy of information reported and minimize the burden to grant recipients.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5 hours per response for job training grant recipients, and 1.25 hours per response for subtitle A assessment, cleanup, and revolving loan fund and subtitle C grant recipients. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Local governments, Indian Tribes and non-profit organizations.

Estimated Number of Respondents: 544.

Frequency of Response: Bi-annual for subtitle C grant recipients; quarterly for subtitle A grant recipients.

Estimated Total Annual Hour Burden: 16,550.

Estimated Total Annual Cost: $1,584,479, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 7,867 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is primarily due to an additional $100 million in grant funding for the EPA Brownfields Program in the American Recovery and Reinvestment Act of 2009, the majority of which is going towards awarding approximately 200 additional grants in the first year of the ICR. EPA had to include these stimulus grantees into its ICR in order to collect Property Profile Form data or Job Training Form data to

measure environmental accomplishments.

Dated: May 28, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–12934 Filed 6–2–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0289; FRL–8912–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request NESHAP for Printing, Coating and Dyeing of Fabrics and Other Textiles (Renewal), EPA ICR Number 2071.04, OMB Control Number 2060–0522

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before *July 6, 2009.*

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2008–0289, to (1) EPA online using *www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 202–564–6369; fax number: 202–564–0050; e-mail address: *lazarus.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 FR 31088) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0289, which is available for public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NESHAP for Printing, Coating and Dyeing of Fabrics and Other Textiles (Renewal).

ICR Numbers: EPA ICR Number 2071.04, OMB Control Number 2060–0522.

ICR Status: This ICR is scheduled to expire on June 30, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Printing, Coating and Dyeing of Fabrics and Other Textiles were proposed on July 11, 2002 (67 FR 46028), promulgated on May 29, 2003 (68 FR 32172), and amended on August 4, 2004 (69 FR 47001). These standards apply to each existing, new or reconstructed printing coating slashing, dyeing or finishing of fabric and other textiles.

Owners or operators of the affected facilities must make the following notifications: (1) Initial notification; (2) notification of initial performance test; and (3) notification of compliance status. Affected sources must submit an initial compliance status report, and a startup, shutdown, and malfunction (SSM) plan. Respondents are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction.

Any owner or operator subject to the provisions of this subpart must maintain a file of these measurements and retain the file for at least five years following the collection of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 69 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information either to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to

respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Printing, coating, and dyeing of fabrics and other textiles facilities.

Estimated Number of Respondents: 140.

Frequency of Response: On occasion, semiannually and initially.

Estimated Total Annual Hour Burden: 20,821.

Estimated Total Annual Cost: $1,687,784: which is comprised of $3,640 in O&M costs, $1,680,831 in Labor costs, and $2,953 in total capital/startup costs.

Changes in the Estimates: There is no change in either the burden hours or cost to the respondents in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the respondents is very low, negative or nonexistent. Therefore, the labor hours and cost figures in the previous ICR reflect the current burden to the respondents and are reiterated in this ICR. It should be noted that the burden hours and annual cost shown in this ICR are somewhat different than in the previous ICR due to the correction of a typographical error and the more accurate rounding of numbers.

Dated: May 28, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–12935 Filed 6–2–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0655; FRL–8913–5, EPA ICR No. 2349.01, OMB Control No. 2060—New]

Agency Information Collection Activities; Proposed Collection; Comment Request; Information Collection Request for the GreenChill Advanced Refrigeration Partnership

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 3, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0655, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epamail.epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Attention Docket ID No. EPA–HQ–OAR–2008–0655, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, NW., Room 3334, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2008–0655. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0655. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Keilly Witman, Stratospheric Protection Division, Office of Air and Radiation, Mailcode 6205J, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9742; fax number: (202) 343–2362; e-mail address: *witman.keilly@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

The EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2008–0655, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

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

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Docket ID No. EPA–HQ–OAR–2008–0655

Affected entities: Entities potentially affected by this action are food retailers that are partners in the GreenChill Advanced Refrigeration Partnership.

Title: Information Collection Request for the GreenChill Advanced Refrigeration Partnership

ICR numbers: EPA ICR No. 2349.1, OMB Control No. 2060-new.

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The GreenChill Advanced Refrigeration Partnership (hereafter referred to as GreenChill Partnership or GreenChill) is an EPA cooperative alliance with the supermarket industry to promote advanced refrigeration technologies, strategies, and practices that reduce emissions of ozone-depleting and greenhouse gas refrigerants. A food retailer's decision to participate in the GreenChill Partnership is completely voluntary. After joining GreenChill by submitting a signed ''Partnership Agreement,'' food retailers are asked to submit a ''Stocks and Emissions Report'' to an independent third party. The form requires partners to provide corporate-wide, aggregated data on the stocks and emissions of all refrigerants used in commercial refrigeration and air-conditioning appliances. The independent third party summarizes the information submitted by the food retailers, removes any identifying information, and sends a summary of the information to GreenChill. Partners are then asked to submit a ''Corporate Refrigerant Management Plan'' with their emissions reductions goals for the next year, along with a brief description of their plan to meet that goal (such as retrofitting old equipment, etc.). These two forms are necessary for GreenChill to track annual supermarket refrigerant emissions rates, allowing GreenChill and its food retail partners to benchmark partners' progress on reducing emissions. The partner emissions data is also the basis for the achievement awards that GreenChill gives out to its partners.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to be 18.1 hours for the first year and 11 hours per year for the second and third years per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 17.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 2.

Estimated total annual burden hours per respondent: 18.1 hours for the first year and 11 hours per year for the second and third years.

Estimated total average annual costs per respondent: $1378.29 for the first year and $812.91 per year for the second and third years. This includes an estimated burden cost of $1367.86 and an estimated cost of $10.43 for capital investment or maintenance and operational costs for the first year and an estimated burden cost of $808.05 and an estimated cost of $4.86 for capital investment or maintenance and operational costs for the second and third years.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received under this notice and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: May 12, 2009.

Brian J. McLean,

Director, Office of Atmospheric Programs.

[FR Doc. E9–12933 Filed 6–2–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0518; FRL–8414–1]

Chloropicrin, Dazomet, Metam Sodium/Potassium, and Methyl Bromide; Amendments to Reregistration Eligibility Decisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's decision to modify certain risk mitigation measures that were specified in the 2008 Reregistration Eligibility Decisions (REDs) for the soil fumigant pesticides chloropicrin, dazomet, metam sodium/potassium, and methyl bromide. EPA conducted this reassessment of the chloropicrin, dazomet, metam sodium/potassium, and methyl bromide REDs in response to public comments received during the comment period, and new data submitted by the Chloropicrin Manufacturers' Task Force and the California Department of Pesticide Regulation. Based on the new information received, and in a continuing effort to mitigate risk, the Agency has made certain modifications in the chloropicrin, dazomet, metam sodium/potassium, and methyl bromide REDs.

FOR FURTHER INFORMATION CONTACT: For pesticide-specific information contact the Chemical Review Manager identified in the Table in Unit II. For general information contact John Leahy, Special Review and Reregistration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6703; fax number: (703) 308–8090; e-mail address: *leahy.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established dockets for this action under the docket ID numbers listed in the Table in Unit II. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*.

II. Background

A. What Action is the Agency Taking?

Section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) directs EPA to reevaluate existing pesticides to ensure that they meet current scientific and regulatory standards. In 2008, EPA issued REDs for the soil fumigants chloropicrin, dazomet, metam sodium/potassium, and methyl bromide under section 4(g)(2)(A) of FIFRA. In response to a notice of availability published in the **Federal Register** on July 16, 2008 (73 FR 40871) (FRL–8372–3), the Agency received substantive comments and new data and/or information from commenters and the registrant(s). The Agency's response to comments is available for viewing in the public dockets. The amended chloropicrin, dazomet, metam sodium/potassium, and methyl bromide REDs reflect changes resulting from Agency consideration of the comments and the new data received on provisions of the RED, as well as efforts by the Agency to appropriately mitigate overall risk. The RED amendments for chloropicrin, dazomet, and metam sodium/potassium, conclude EPA's reregistration eligibility decision-making process for these pesticides. For methyl bromide, the RED amendment concludes EPA's reregistration eligibility decision-making process for the soil uses of this chemical. Amendments to the commodity uses of methyl bromide will be concluded in the near future.

Due to the broad scope of these decision documents the Agency put the documents out for comment in 2008 to allow stakeholders the opportunity to review and provide comments on issues related to the implementation of the risk management measures. The Agency received numerous comments on the RED mitigation measures and has made changes to the following measures based on a review of the impacts and risks described in the comments: buffer zones, buffer zone posting, respiratory protection, tarp perforation and removal, good agricultural practices, fumigant management plans, fumigant site monitoring, response information to neighbors, training, and notice to state and tribal lead agencies. The Agency also received new chloropicrin and dazomet flux studies and has taken these new studies into consideration and revised the chloropicrin and dazomet buffer zone tables. The label table incorporated into the chloropicrin, dazomet, metam sodium/potassium, and methyl bromide RED amendments includes modifications which specify label language for the changes to the mitigation measures described above.

TABLE—FUMIGANT CONTACTS

Reregistration Case Name and Number	Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Chloropicrin, 0040	EPA–HQ–OPP–2007–0350	Andrea Carone (703) 308-0122 carone.andrea@epa.gov
Dazomet, 2135	EPA–HQ–OPP–2005–0128	Dana L. Friedman (703) 347-8827 friedman.dana@epa.gov
Metam Sodium/Potassium, 2390	EPA–HQ–OPP–2005–0125	Karen Santora (703) 347-8781 santora.karen@epa.gov

TABLE—FUMIGANT CONTACTS—Continued

Reregistration Case Name and Number	Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Methyl Bromide, 0335	EPA–HQ–OPP–2005–0123	Susan Bartow (703) 603-0065 bartow.susan@epa.gov

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

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 15, 2009.

Richard P. Keigwin, Jr.

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E9–12559 Filed 6–2–09; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0383; FRL–8411–8]

L-Lactic Acid Registration Review Final Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's final registration review decision for the pesticide L-Lactic Acid, case 6062. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without causing unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information, contact*: Andrew Bryceland, Biopesticide and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6928 ; fax number: (703) 308–7026; e-mail address: *bryceland.andrew@epa.gov.*

For general information on the registration review program, contact: Kevin Costello, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin @epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the pesticide specific contact person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0383. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

A. What Action is the Agency Taking?

Pursuant to 40 CFR 155.58(c), this notice announces the availability of EPA's final registration review decision for L-Lactic Acid, case 6062. L-Lactic Acid is a low-toxicity acid that occurs naturally in several foods and is primarily found in fermented milk products. However, L-Lactic Acid also occurs naturally in meats, fruits, tomato juice, beer, wine, molasses, blood and muscles of animals, and in the soil. L-Lactic Acid is registered as a biochemical pesticide used as a mosquito attractant (in traps). In addition, L-Lactic Acid is also used as an antimicrobial disinfectant, indirect food contact surface sanitizer, fungicide, and virucide when applied to hard, non-porous surfaces such as tile, countertops, metal, or glass.

Pursuant to 40 CFR 155.57, a registration review decision is the Agency's determination whether a pesticide meets, or does not meet, the standard for registration in FIFRA. EPA has considered L-Lactic Acid in light of the FIFRA standard for registration. The L-Lactic Acid Final Decision document in the docket describes the Agency's rationale for issuing a registration review final decision for this pesticide.

In addition to the final registration review decision document, the registration review docket for L-Lactic Acid also includes other relevant documents related to the registration review of this case. The proposed registration review decision was posted to the docket and the public was invited to submit any comments or new information. During the 60–day comment period, no public comments were received.

Pursuant to 40 CFR 155.58(c), the registration review case docket for L-Lactic Acid will remain open until all actions required in the final decision have been completed.

Background on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/*

registration_review. Links to earlier documents related to the registration review of this pesticide are provided at: *http://www.epa.gov/oppsrrd1/registration_review/l-lactic-acid/index.htm* .

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

Section 3(g) of FIFRA and 40 CFR part 155, subpart C, provide authority for this action.

List of Subjects

Environmental protection, Registration review, Pesticides and pests, L-Lactic Acid.

Dated: May 20, 2009.

W. Michael McDavit,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E9–12643 Filed 6–2–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0322; FRL–8420–3]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 3–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review The Use of Structure Activity Relationships of Estrogen Binding Affinity to Support Prioritization of Pesticide Inert Ingredients and Antimicrobial Pesticides for Screening and Testing.

DATES: The meeting will be held on August 25–27, 2009, from 9 a.m. to approximately 5:30 p.m.

Comments. The Agency encourages that written comments be submitted by August 17, 2009, and requests for oral comments be submitted by August 20, 2009. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after August 17, 2009, should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

Nominations. Nominations of candidates to serve as ad hoc members of FIFRA SAP for this meeting should be provided on or before June 17, 2009

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0322, by one of the following methods:

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

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

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

Instructions. Direct your comments to docket ID number EPA–HQ–OPP–2009–0322. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as ad hoc members of FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Sharlene Matten, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–0130; fax number: (202) 564-8382; e-mail addresses: *matten.sharlene@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities

may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

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

When submitting comments, remember to:

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

C. How May I Participate in This Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2009–0322 in the subject line on the first page of your request.

1. *Written comments*. The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than August 17, 2009, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after August 17, 2009, should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT.** Anyone submitting written comments at the meeting should bring 30 copies for distribution to FIFRA SAP.

2. *Oral comments*. The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than August 20, 2009, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting*. Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of FIFRA SAP for this meeting*. As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: *In Vitro* Models of Receptor Binding (e.g., Estrogen) and Gene Activation, Expert Systems and SAR Modeling, and Use of Expert Systems in Prioritization Processes for Toxicity Testing Programs. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before June 17, 2009. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 10–12 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP website at *http://epa.gov/scipoly/sap* or may be obtained from the OPP

Regulatory Public Docket at *http://www.regulations.gov*.

II. Background

A. Purpose of FIFRA SAP

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the SAP on an ad hoc basis to assist in reviews conducted by the SAP. As a peer review mechanism, FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

The Office of Pesticide Programs has a number of ongoing activities to broaden the suite of computer-based methods to better predict potential hazards and improve the effectiveness of risk assessment and risk management by focusing the generation of new data on likely risks of concern. The use of structure-activity relationships (SARs) in early hazard identification is one such cost effective prioritization tool that can guide the systematic collection of key test data. EPA is required to screen all pesticide chemicals, which includes active ingredients and other (''inert'') ingredients for potential endocrine disruption (ED). The Agency must prioritize hundreds of chemicals for ED screening and testing in biologically complex and resource intensive assays. This FIFRA SAP review will be focused on an SAR approach that was developed for pesticide inert ingredients and antimicrobial pesticides to help prioritize candidate chemicals for the Tier 1 Endocrine Disruptor Screening Program specific to an estrogen-mediated toxicity pathway. A particularly challenging issue is the development of prioritization techniques for chemicals, such as inert ingredients and some antimicrobial active ingredients that have minimal existing toxicological information. This SAR/Rule-Based Expert System for predicting estrogen receptor (ER) binding affinity is based on data derived from two *in vitro* assays: one optimized to measure the potential of chemicals to bind rainbow trout estrogen receptors (rtER), and a second that measures gene activation through production of vitellogenin. The SAP will be asked to comment on various aspects of the SAR/Rule-Based Expert System including transparency of the approach, biological endpoint definition, mechanistic interpretation, and model's applicability domain.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and ad hoc members for this meeting), and the meeting agenda will be available by August 10, 2009. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap*.

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP website or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 27, 2009.

Frank Sanders,

Director, Office of Science Coordination and Policy.

[FR Doc. E9–12923 Filed 6–2–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–1019; FRL–8414–5]

Nicotine; Product Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellation, voluntarily requested by the registrant and accepted by the Agency, of products containing the pesticide nicotine, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows an October 29, 2008 **Federal Register** Notice of Receipt of Request from the nicotine registrant to voluntarily cancel its sole remaining nicotine product registration. This product registration is the last nicotine pesticide product registered for use in the United States. In the October 29, 2008 Notice, EPA indicated that it would issue an order implementing the cancellation, unless the Agency received substantive comments within the 180– day comment period that would merit its further review of these requests, or unless the registrant withdrew its request within this period. The Agency did not receive any comments on the notice. Further, the registrant did not withdraw its request. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellation. Any distribution, sale, or use of the nicotine product subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellation is effective January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Jill Bloom, Special Review and Reregistration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8019; fax number: (703) 308–7070; e-mail address: *bloom.jill@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since

others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007—1019. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

This notice announces the cancellation, as requested by the registrant, of the sole remaining nicotine end-use product registered under section 3 of FIFRA. This registration is listed in Table 1 of this unit.

TABLE 1—NICOTINE PRODUCT CANCELLATION

EPA Registration Number	Product Name
1327-41	Fulex Nicotine Fumigator

Table 2 of this unit shows the name and address of record for the registrant of the registration listed in Table 1 of this unit.

TABLE 2—REGISTRANT OF CANCELLED NICOTINE PRODUCTS

EPA Company Number	Company Name and Address
1327	Fuller System, Inc. P.O. Box 3053, Woburn, MA 01888

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period, EPA received no comments in response to the October 29, 2008 **Federal Register** notice announcing the Agency's receipt of the request for voluntary cancellation of the nicotine product identified in Table 1 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellation of the nicotine registration identified in Table 1 of Unit II. Accordingly, the Agency orders that the nicotine product registration identified in Table 1 of Unit II is hereby canceled, as of January 1, 2014, the effective date of this order. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit VI. will be considered a violation of FIFRA.

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this notice includes the following existing stocks provisions.

The sale or distribution of existing stocks is permitted until December 31, 2014. All sale or distribution of existing stocks is prohibited after December 31, 2014, unless that sale or distribution is solely for the purpose of facilitating disposal or export of the product. The use of this product will be permitted until existing stocks are depleted. Any use of existing stocks must be in a manner consistent with the previously-approved labeling for this product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 19, 2009.

Richard P. Keigwin, Jr.

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E9–12561 Filed 6–2–09; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0599; FRL–8413–4]

Iodine and Iodophors Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's Reregistration Eligibility Decision (RED) and supporting science documents for the pesticide iodine and iodophor complexes. The Reregistration Eligibility Decision document for iodine and iodophor complexes was signed on July 27, 2006 with additional revisions described in a March 17, 2009 amendment.

FOR FURTHER INFORMATION CONTACT: Heather Garvie, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0034; fax number: (703) 305–5620; e-mail address: *garvie.heather@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket

identification (ID) number EPA–HQ–OPP–2006–0599. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

A. What Action is the Agency Taking?

Section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) directs EPA to reevaluate existing pesticides to ensure that they meet current scientific and regulatory standards. In 2006, EPA signed a RED for iodine and iodophor complexes under section 4(g)(2)(A) of FIFRA. An additional amendment was signed on March 17, 2009.

Taking into consideration all available information on iodine, including its relatively low acute toxicity, the reversibility of subclinical hypothyroidism, the low toxicity of the iodophor complexes, the Food and Drug Administration's designation of iodide as a ''Generally Recognized As Safe (GRAS)'' chemical, the presence of iodine in food products, and the sporadic and short-term nature of the antimicrobial uses, the Agency concludes that exposure to iodine and iodophor complexes from the EPA-registered uses present no risk of concern. No mitigation measures are necessary at this time. The March 17, 2009 amendment to the Iodine and Iodophor Complexes RED is inclusive of a Labeling Changes Summary Table and a revised Appendix A. The label table incorporated into the Iodine and Iodophor Complexes March 17, 2009 RED amendment includes modifications which specify label language for emergency human drinking water use. Appendix A is inclusive of the current EPA-registered products containing iodine or an iodophor complex as an active ingredient.

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

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests, Antimicrobials, Iodine, Iodophor complexes.

Dated: May 8, 2009.

Betty Shackleford,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E9–12413 Filed 6–2–09; 8:45 a.m.]

BILLING CODE 6560–50–S

FARM CREDIT SYSTEM INSURANCE CORPORATION

Regular Meeting

AGENCY: Farm Credit System Insurance Corporation Board.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATE AND TIME: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 10, 2009, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Closed Sesson

- FCSIC Report on System Performance

Open Session

A. Approval of Minutes

- March 24, 2009 (Open and Closed)

B. Business Reports

- FCSIC Financial Report
- Report on Insured Obligations
- Quarterly Report on Annual Performance Plan

C. New Business

- Mid-Year Review of Insurance Premium Rates

Dated: May 28, 2009.

Roland E. Smith,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. E9–12941 Filed 6–2–09; 8:45 am]

BILLING CODE 6710–01–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 10:33 a.m. on Friday, May 29, 2009, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's corporate, supervisory, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Martin J. Gruenberg, seconded by Director Thomas J. Curry (Appointive), concurred in by Director John C. Dugan (Comptroller of the Currency), Director John E. Bowman (Acting Director, Office of Thrift Supervision), 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)(2), (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)(2), (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: May 29, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–12909 Filed 6–2–09; 8:45 am]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10 a.m. on Friday, May 29, 2009, the Corporation's Board of Directors determined, on motion of Vice Chairman Martin J. Gruenberg, seconded by Director John E. Bowman (Acting Director, Office of Thrift Supervision), concurred in by Director Thomas J. Curry (Appointive), Director John C. Dugan (Comptroller of the Currency), and Chairman Sheila C. Bair, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum and resolutions re: Honoring Employees with 35 Years of Federal Service.

The Board further determined, by the same majority vote, that no notice earlier than May 28, 2009, of the change in the subject matter of the meeting was practicable.

Dated: May 29, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–12910 Filed 6–2–09; 8:45 am]

BILLING CODE 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 June 17, 2009.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Donald A. Hanson Family Trust, which consist of Donna L. Hanson, LeRoy, Minnesota, individually and as trustee of the Family Trust, Jeanie Rae Thorson, Rochester, Minnesota, as trustee of the Family Trust, Barbara Kay Billings, Cresco, Iowa, as trustee of the Family Trust, and Kristi Jo Jacobsen, Cannon Falls, Minnesota, as trustee of the Family Trust, as a group acting in concert; to acquire and retain shares of First LeRoy Bancorporation, Inc., LeRoy, Minnesota, and thereby indirectly acquire and retain control of First State Bank Minnesota, LeRoy, Minnesota.

Board of Governors of the Federal Reserve System, May 29, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–12896 Filed 6–2–09; 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 June 29, 2009.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. JJR Holding Company, Brick, New Jersey; to acquire 100 percent of the voting shares of First BankAmericano, Elizabeth, New Jersey.

B. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Community Banchshares of Mississippi, Inc. Employee Stock Ownership Plan, Brandon, Mississippi; to acquire up to an additional 1.06 percent, for a total of 20.13 percent of the voting shares of Community Bancshares of Mississippi, Inc., Brandon, Mississippi, and thereby indirectly acquire, Community Bank of North Mississippi, Amory, Mississippi; Community Bank of Mississippi, Forest, Mississippi; Community Bank, Ellisville, Mississippi; Community Bank Coast, Biloxi, Mississippi; its 100 percent owned middle-tier bank holding company Community Holding Company of Alabama, Brandon, Mississippi, and it wholly-owned subsidiary bank Community Bank, N.A., Mobile, Alabama.

C. Federal Reserve Bank of Kansas City (Todd Offerbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Hulett Bancorp, Hulett, Wyoming; to acquire 100 percent of the voting shares of The First National Bank of Ekalaka, Ekalaka, Montana.

Board of Governors of the Federal Reserve System, May 29, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E9–12897 Filed 6–2–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Transco Worldwide Freight LLC, 138–04 175th Street, Jamaica, NY 11434. Officer: Demba S. Ba, Owner (Qualifying Individual).

Trico Forwarding USA Inc., 172 E. Manville Street, Compton, CA 90220. Officers: Lionel M. Perera, President (Qualifying Individual). Nirmala P. Perera, Vice President.

Deployed Logistics, Inc. dba X–Line Logistics, 1547 Avenida Salvador, San Clemente, CA 92672. Officer: Kevin D. McCarten, CEO (Qualifying Individual).

Charcamp Holdings, Inc., 2503 SE. J Street, Bentonville, AR 72712. Officer: Charles J. Charlton, Chairman (Qualifying Individual).

IES Logistics Corp., 155–04 145th Ave., Jamaica, NY 11434. Officer: Dong Ik Lee, President (Qualifying Individual).

SOBE Enterprises, Inc. dba SOBE Export Services, 8349 NW. 68 Street, Miami, FL 33166. Officer: Claude Sterling, President (Qualifying Individual).

Kyodo Shipping & Trading Corporation USA, 17–01 Pollitt Drive, Fair Lawn, NJ 07410. Officer: Uri Cohen, President (Qualifying Individual).

Byasa Logistics LLC, 2700 S. Azusa Ave., #179, West Covina, CA 91792. Officers: Lucia Y. Babb, Managing Member (Qualifying Individual). Owen L. Babb, Member.

Overseas Express Shipping LLC, 1139 East Jersey Street, #209, Elizabeth, NJ 07201. Officers: Thomas Osei, Co-Owner, Yaw Amankwah, Co-Owner, Nana Gyamera, Co-Owner (Qualifying Individuals).

Exfreight Zeta Inc., 6500 Silver Dart Drive, #262, Mississauga, Ontario L5P 1B2 Canada. Officers: Ajay Nair, President (Qualifying Individual). Sherman Fernando, Vice President.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

BookFreight Worldwide, LLC, 8201 La Porte Fwy, Ste. 300, Houston, TX 77012. Officers: Rosa G. Mahand, Secretary (Qualifying Individual). Brandon L. Mahand, Managing Director.

ARI Shipping Corp dba Weshipboats.com, 80 Sheridan Blvd., Inwood, NY 11096. Officer: Ilan Fidler, President (Qualifying Individual).

Midacomp Corp., 2841 NW. 107th Ave., Miami, FL 33172. Officers: Rossana Gutierrez, Operations Manager (Qualifying Individual). Adriana Stern, President.

Mitsubishi Logistics America Corporation, 61 Broadway, Ste. 1115, New York, NY 10006. Officer: Robert M. Wallace, Asst. V. President (Qualifying Individual).

Direct Parcel Service Corp dba DPS Cargo dba Direct Parcel Service, 7703 NW. 46 Street, Doral, FL 33166. Officer: Garcia Milagros, Director (Qualifying Individual).

Seamaster Shipping Company, 4003 Coyle Street, Houston, TX 77003. Officer: Wajid A. Qureshi, President (Qualifying Individual).

Pelham Services, Inc., 5413 NW. 72 Ave., Miami, FL 33166. Officers: Raul E. Reveron, Vice President (Qualifying Individual). Mary Reveron, President.

All States Van Lines LLC, 230 174 Street, #811, Sunny Isles Beach, FL 33160. Officer: Vita Shteyn, Member (Qualifying Individual).

Allround Logistics Inc. dba Allround Maritime Services, 7240 Ingram Street, Forest Hills, NY 11375. Officers: Roland Meier, President (Qualifying Individual). Martina Stahl, Vice President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Golden Freight, Inc., 671E Olive Ave., #1, Sunnyvale, CA 94086. Officer: Chi T. Hoang, CEO (Qualifying Individual).

Elzado Enterprises Incorporated dba Elzado Enterprises Inc., 14940 Grant Lane, Leisure City, FL 33033. Officers: Trudy Westcarr, CFO (Qualifying Individual). Ernest E. Robinson, President.

HSHK Corp., 19 Plymouth Rd., Staten Island, NY 10314. Officer: Hanan W. Seif, President (Qualifying Individual).

Pelican Logistics Inc., 2708 West Brairwood Dr., Arlington Heights, IL 60005. Officer: Jodie Kim, President (Qualifying Individual).

International Cargo Corporation, 7965 NW. 64th Street, Miami, FL 33166. Officer: Carlos G. Esperanza, President (Qualifying Individual).

Dated: May 29, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–12960 Filed 6–2–09; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 020647N.
Name: SJT Trading Corp.
Address: 7382 NW 35th Terr., Ste. 106, Miami, FL 33122.
Date Revoked: May 15, 2009.
Reason: Failed to maintain a valid bond.

License Number: 004670NF.
Name: The Pelixan Group, Inc.
Address: 3405–B NW 72nd Ave., Ste. 111, Miami, FL 33122.
Date Revoked: May 16, 2009 (NVOCC) and May 9, 2009 (OFF).
Reason: Failed to maintain valid bonds.

License Number: 020084N.
Name: Velocity Freight Inc.
Address: 20283 State Rd. 7, Ste. 300, Boca Raton, FL 33498.
Date Revoked: May 15, 2009.
Reason: Failed to maintain a valid bond.

License Number: 017354N.
Name: Wingar Logistics Inc.
Address: 9690 Telstar Ave., Ste. 207, El Monte, CA 91731.
Date Revoked: May 17, 2009.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E9–12961 Filed 6–2–09; 8:45 am]

BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

Multiple Award Schedule Advisory Panel; Notification of Public Advisory Panel Meetings

AGENCY: U.S. General Services Administration (GSA).

ACTION: Notice.

SUMMARY: The U.S. General Services Administration (GSA) Multiple Award Schedule Advisory Panel (MAS Panel), a Federal Advisory Committee, will hold a public meeting on Friday, June

26, 2009. GSA utilizes the MAS program to establish long-term Governmentwide contracts with responsible firms to provide Federal, State, and local government customers with access to a wide variety of commercial supplies (products) and services.

The MAS Panel was established to develop advice and recommendations on MAS program pricing policies, provisions, and procedures in the context of current commercial pricing practices. The Panel is developing recommendations for MAS program pricing provisions for the acquisition of (1) professional services; (2) products; (3) total solutions which consist of professional services and products; and (4) non professional services. In developing the recommendations, the Panel will, at a minimum, address these 5 questions for each of the 4 types of acquisitions envisioned above: (1) Where does competition take place?; (2) If competition takes place primarily at the task/delivery order level, does a fair and reasonable price determination at the MAS contract level really matter?; (3) If the Panel consensus is that competition is at the task order level, are the methods that GSA uses to determine fair and reasonable prices and maintain the price/discount relationship with the basis of award customer(s) adequate?; (4) If the current policy is not adequate, what are the recommendations to improve the policy/guidance; and (5) If fair and reasonable price determination at the MAS contract level is not beneficial and the fair and reasonable price determination is to be determined only at the task/delivery order level, then what is the GSA role?

The meeting will be held at U.S. General Services Administration, 1800 F Street, NW., 1st Floor Auditorium, Washington, DC 20405. The location is within walking distance of the Farragut West and Farragut North metro stops. The start time for the meeting is 9 a.m., and the meeting will adjourn no later than 5 p.m.

FOR FURTHER INFORMATION CONTACT: Information on the Panel meetings, agendas, and other information can be obtained at *http://www.gsa.gov/masadvisorypanel* or you may contact Ms. Pat Brooks, Designated Federal Officer, Multiple Award Schedule Advisory Panel, U.S. General Services Administration, 2011 Crystal Drive, Suite 911, Arlington, VA 22205; telephone 703–605–3406, Fax 703–605–3454; or via e-mail at *mas.advisorypanel@gsa.gov.*

Availability of Materials: All meeting materials, including meeting agendas, handouts, public comments, and meeting minutes will be posted on the MAS Panel Web site at *http://www.gsa.gov/masadvisorypanel* or *http://www.gsa.gov/masap.*

Meeting Access: Individuals requiring special accommodations at any of these meetings should contact Ms. Brooks at least ten (10) business days prior to the meeting date so that appropriate arrangements can be made.

Dated: May 29, 2009.

Rodney P. Lantier,

Acting Senior Procurement Executive & Acting Deputy Chief Acquisition Officer, Office of the Chief Acquisition Officer, U.S. General Services Administration.

[FR Doc. E9–12937 Filed 6–2–09; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and compliant with OMB M–07–16. This notice is an updated Privacy Act system of records notice.

DATES: Effective July 6, 2009.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202–208–1317; e-mail *gsa.privacyact@gsa.gov.*

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA completed an agency wide review of its Privacy Act systems of records. As a result of the review, GSA is publishing an updated Privacy Act system of records notice. Nothing in the revised system notice indicates a change in authorities or practices regarding the collection and maintenance of information, nor do the changes impact individuals' rights to access or amend their records in the system of records. The updated system notice makes administrative changes to the system notice, and ensures compliance with the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004 and the subsequent DHS/TSA Secure Flight Program regarding the collection of relevant personal data.

Dated: May 27, 2009.

Cheryl M. Paige,

Director, Office of Information Management.

GSA/GOVT–4

SYSTEM NAME:

Contracted Travel Services Program.

SYSTEM LOCATION:

System records are located at the service providers under contract with a Federal agency and at the Federal agencies using the contracts.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are Federal employees authorized to perform official travel and individuals being provided travel by the Federal Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

System records may include a traveler's profile containing: Full name of individual which matches the name on the form of ID used for travel; Social Security Number; employee identification number; home and office telephones; home address; home and office e-mail addresses; emergency contact name and telephone number; agency name, address, and telephone number; air travel preference; rental car identification number and car preference; hotel preference; current passport and/or visa number(s); credit card numbers and related information; bank account information needed for electronic funds transfer; frequent traveler account information (e.g., frequent flyer account numbers); date of birth; gender; redress number (number DHA assigns to passenger to promote resolution with previous watch list alerts); known traveler number (passenger number DHS utilizes to facilitate passenger clearance); trip information (e.g., destinations, reservation information); travel authorization information; travel claim information; monthly reports from travel agent(s) showing charges to individuals, balances, and other types of account analyses; and other official travel related information.

AUTHORITIES FOR MAINTENANCE:

31 U.S.C. 3511, 3512, and 3523; 5 U.S.C. Chapter 57; and implementing Federal Travel Regulations (41 CFR Chapters 300–304).

PURPOSE:

To establish a comprehensive beginning-to-end travel services system containing information to enable travel service providers under contract to the Federal Government to authorize, issue,

and account for travel and travel reimbursements provided to individuals on official Federal Government business.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSES FOR USING THE SYSTEM:

a. To another Federal agency, Travel Management Center (TMC), online booking engine suppliers and the airlines that are required to support the DHS/TSA Secure Flight program. In this program, DHS/TSA assumes the function of conducting pre-flight comparisons of airline passenger information to Federal Government watch lists. In order to supply the appropriate information, these mentioned parties are responsible for obtaining new data fields consisting of personal information for date of birth, gender, redress number, and known traveler number. At this time, the redress number is optional and the known traveler number is for future programs. They may be required to be stored in another phase of the Secure Flight program.

b. To a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where agencies become aware of a violation or potential violation of civil or criminal law or regulation.

c. To another Federal agency or a court when the Federal Government is party to a judicial proceeding.

d. To a Member of Congress or staff on behalf and at the requests of the individual who is the subject of the record.

e. To a Federal agency employee, expert, consultant, or contractor in performing a Federal duty for purposes of authorizing, arranging, and/or claiming reimbursement for official travel, including, but not limited to, traveler profile information.

f. To a credit card company for billing purposes, including collection of past due amounts.

g. To an expert, consultant, or contractor in the performance of a Federal duty to which the information is relevant.

h. To a Federal agency by the contractor in the form of itemized statements or invoices, and reports of all transactions, including refunds and adjustments to enable audits of charges to the Federal Government.

i. To a Federal agency in connection with the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation; the letting of a contract; or the issuance of a grant, license, or other benefit to the extent that the information is relevant and necessary to a decision.

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 to whom the information pertains.

k. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), or the Government Accountability Office (GAO) when the information is required for program evaluation purposes.

l. To officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

m. To a travel services provider for billing and refund purposes.

n. To a carrier or an insurer for settlement of an employee claim for loss of or damage to personal property incident to service under 31 U.S.C. 3721, or to a party involved in a tort claim against the Federal Government resulting from an accident involving a traveler.

o. To a credit reporting agency or credit bureau, as allowed and authorized by law, for the purpose of adding to a credit history file when it has been determined that an individual's account with a creditor with input to the system is delinquent.

p. Summary or statistical data from the system with no reference to an identifiable individual may be released publicly.

q. To the National Archives and Records Administration (NARA) for records management purposes.

r. To appropriate agencies, entities, and persons when (1) The Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency 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 GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF SYSTEM RECORDS:

STORAGE:

Paper records are stored in file cabinets. Electronic records are maintained within a computer (e.g., PC, server, etc.) and attached equipment.

RETRIEVABILITY:

Paper records are filed by a traveler's name and/or Social Security Number/ employee identification number at each location. Electronic records are retrievable by any attribute of the system.

SAFEGUARDS:

Paper records are stored in lockable file cabinets or secured rooms. Electronic records are protected by a password system and a FIPS 140–2 compliant encrypted Internet connection. Information is released only to authorized users and officials on a need-to-know basis.

RETENTION AND DISPOSAL:

Records kept by a Federal agency are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or an agency and NARA approved records disposition schedule.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Travel and Transportation Services (QMC), General Services Administration, Federal Acquisition Service, Room 300, 2200 Crystal Drive, Arlington, VA 22202.

NOTIFICATION PROCEDURE:

Inquiries from individuals should be addressed to the appropriate administrative office for the agency that is authorizing and/or reimbursing their travel.

RECORDS ACCESS PROCEDURES:

Requests from individuals should be addressed to the appropriate administrative office for the agency that is authorizing and/or reimbursing their travel. Individuals must furnish their full name and/or Social Security Number to the authorizing agency for their records to be located and identified.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the appropriate administrative office for the agency that authorized and/or reimbursed their travel.

Individuals must furnish their full name and/or Social Security Number along with the name of the authorizing agency, including duty station where they were employed at the time travel was performed.

RECORD SOURCES CATEGORIES:

The sources are the individuals themselves, employees, travel authorizations, credit card companies, and travel service providers.

[FR Doc. E9–12951 Filed 6–2–09; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; 24-Hour Dietary Recall Method Comparison and the National Cancer Institute (NCI) Observational Feeding Studies

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 Cancer Institute (NCI), 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: 24-hour Dietary Recall Method Comparison and the National Cancer Institute (NCI) Observational Feeding Studies. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The objective of the two studies is to compare the performance of the newly developed computerized Automated Self-Administered 24–Hour Recall (ASA24) approach to collecting 24 hour recall (24HR) data with the current standard, the interviewer-administered Automated Multiple Pass Method (AMPM). The ultimate goal is to determine to what extent the new automated instrument can be used instead of the more expensive interviewer-administered instrument in the collection of dietary intake data. *Frequency of Response:* Twice. *Affected Public:* Individuals. *Type of Respondents:* For the 24-hour Dietary Recall Method Comparison study, approximately 1,200 adult members from three health maintenance organization plans (in Minnesota, California, and Michigan) between ages 20 and 70 years. For the NCI Observational Feeding Study, approximately 90 adult residents from the Washington, DC metropolitan area between ages 20 and 70 years. The annual reporting burden is estimated at 919 hours (see table below). This amounts to an estimated 1838 burden hours over the 2-year data collection period with a total cost to the respondents $32,482.

There are no Capital costs, Operating costs, and/or Maintenance Costs to report.

Study / questionnaire	Number of respondents	Frequency of response	Average time response (minutes)	Annual hour burden
24HR recall comparison study:				
Information and Consent	650	1	15/60	162.50
Screener	600	1	3/60	30.00
Dietary Recall 1	540	1	30/60	270.00
Dietary Recall 2	486	1	30/60	243.00
Demographics questionnaire	540	1	8/60	72.00
Preference survey	243	1	3/60	12.15
Subtotal				789.65
NCI observational feeding study:				
Screener	50	1	3/60	2.50
Eating 3 meals	45	1	135/60	101.25
Dietary Recall	40	1	30/60	20.00
Demographics questionnaire	40	1	8/60	5.33
Subtotal				129.08
Total				918.73

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 proposed performance of the functions of the agency, including whether the information may have practical utility; (2) The accuracy of the 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, contact Frances E. Thompson, PhD, Project Officer, National Cancer Institute, NIH, EPN 4095A, 6130 Executive Boulevard MSC 7335, Bethesda, Maryland 20892–7335, or call non-toll-free number 301–594–4410, or FAX your request to 301–435–3710, or e-mail your request, including your address, to *thompsof@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of this notice.

Dated: May 26, 2009.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E9–12876 Filed 6–2–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0125]

Draft Guidance for Industry and Researchers on the Radioactive Drug Research Committee: Human Research Without an Investigational New Drug Application; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry and researchers entitled ''The Radioactive Drug Research Committee: Human Research Without an Investigational New Drug Application.'' This draft guidance provides information to those using radioactive drugs for certain research purposes to help determine whether research studies may be conducted under an FDA-approved radioactive drug research committee, or whether research studies must be conducted under an investigational new drug application (IND). It also offers answers to frequently asked questions on conducting research with radioactive drugs, and provides information on the membership, functions, and reporting requirements of a radioactive drug research committee approved by FDA.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by September 1, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Orhan Suleiman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 2206, Silver Spring, MD 20993–0002, 301–796–1471.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and researchers entitled ''The Radioactive Drug Research Committee: Human Research Without an Investigational New Drug Application.''

On July 25, 1975 (40 FR 31298), FDA changed the conditions under which new radioactive drug and biological products could be used. The Agency terminated a 1963 order from the Commissioner of Food and Drugs (28 FR 183; January 8, 1963) that had exempted radioactive new drug and biological products for investigational use in humans from new drug requirements (part 312 (21 CFR part 312)), as long as they were shipped consistent with regulations issued by the Atomic Energy Commission (AEC). FDA and AEC had agreed that all radioactive drugs and biological products should now become subject to the same requirements for investigational use as other new drugs under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and section 351 of the Public Health Service Act (42 U.S.C. 262). Simultaneously, the agency issued regulations (§ 361.1 (21 CFR 361.1)) explaining when radioactive drugs for basic science and medical research would not be subject to the same requirements for investigational use as other new drugs.

Today, research studies with a radioactive drug or biological products may be conducted in a number of ways: (1) Under an IND (part 312), (2) exempt from IND requirements (§ 312.2), or (3) under certain conditions, with the supervision and approval of an FDA-approved Radioactive Drugs Research Committee (RDRC) (§ 361.1).

This guidance discusses the conditions under which research with a radioactive drug may be conducted under § 361.1. Appendices to the guidance answer frequently asked questions about those conditions and provide additional information on RDRCs. Appendix A of the draft guidance answers questions on basic science research with radioactive drugs. Appendix B addresses approval by the RDRC and the information that must be submitted by investigators to the RDRC. Appendix C discusses the limits on the pharmacological dose, and Appendix D discusses the limits on the radiation dose. Each of these appendices also includes a summary of the regulations. Appendix E provides information on the membership, functions, reports, and monitoring of an RDRC. The final appendix, Appendix F, is an RDRC review criteria checklist, indicating the areas on which the RDRC will focus when considering a proposed research study.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on determining whether human research with a radioactive drug can be conducted under a radioactive drug research committee. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 361.1 have been approved under OMB control number 0910–0053.

III. Comments

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

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: May 14, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–12832 Filed 6–2–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Guideline for Prevention of Catheter-Associated Urinary Tract Infections 2008

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of document availability and request for public comment.

SUMMARY: This notice is a request for review of and comment on the *Draft Guideline for Prevention of Catheter-Associated Urinary Tract Infections 2008,* available on the following Web site: *http://wwwnd.cdc.gov/publiccomments/.* This document is for use by infection prevention staff, healthcare epidemiologists, healthcare administrators, nurses, other healthcare providers, and persons responsible for developing, implementing, and evaluating infection prevention and control programs for healthcare settings across the continuum of care. The guideline updates and expands the 1981 Guideline for Prevention of Catheter-associated Urinary Tract Infections.

DATES: Comments must be received on or before July 6, 2009.

ADDRESSES: Comments on the *Draft Guideline for Prevention of Catheter-Associated Urinary Tract Infections* should be submitted by e-mail to *cauti@cdc.gov* or by mail to CDC, Division of Healthcare Quality Promotion, Attn: Resource Center, 1600 Clifton Rd., NE., Mailstop A–31, Atlanta, Georgia 30333; or by fax 404–639–4049.

SUPPLEMENTARY INFORMATION: The *Draft Guideline for Prevention of Catheter-Associated Urinary Tract Infections* addresses prevention of CAUTI for patients in need of either short- or long-term urinary catheterization in any type of healthcare setting and includes data for indwelling urethral catheterization as well as alternative methods of urinary drainage. The guideline also includes specific recommendations for implementation, performance measurement, and surveillance. Recommendations for further research are also included to address the knowledge gaps in CAUTI prevention identified during the literature review. The guideline is based on a targeted systematic review of the best available evidence with explicit links between the evidence and recommendations.

Dated: May 21, 2009.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–12901 Filed 6–2–09; 8:45 am]

BILLING CODE 4163–18–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.

Novel Method of Treating Cancer Using Ixolaris

Description of Technology: Aggressive tumors spread between tissues in a process known as metastasis. Tumor metastasis, particularly with regard to brain cancer (gliomas), has been linked to the aberrant expression of membrane-bound tissue factor (TF). TF normally functions as a blood coagulation factor and can lead to the production of pro-angiogenesis factors such as vascular endothelial growth factor (VEGF). By doing this in the vicinity of tumors, TF may enhance both tumor growth and the ability of tumors to metastasize.

Ixolaris is a protein that prevents the initiation of blood coagulation, specifically by inhibiting TF. NIH inventors have explored the possibility that Ixolaris could be effective as an anti-cancer therapy. As an inhibitor of TF, Ixolaris could potentially inhibit the function of TF, thereby reducing the ability of a tumor to develop and to metastasize. Recent data show that Ixolaris has the ability to prevent tumor growth in vivo using mouse xenograft models. Importantly, the inhibition in vivo occurred without noticeable bleeding. Since Ixolaris is not immunogenic, it might be an excellent candidate as an anti-cancer therapeutic.

Application: Treatment and prevention of tumor growth and metastasis by inhibiting TF and blood vessel formation.

Advantages: Provides a novel mechanism for preventing tumor metastasis.

Development Status: Preclinical stage of development.

Inventors: Ivo Francischetti (NIAID) *et al.*

Patent Status: U.S. Provisional Application No. 61/161,223 (HHS Reference No. E–148–2009/0–US–01).

For more information, see:

1. U.S. Patent 7,078,508 entitled ''Ixodes Scapularis Tissue Factor Pathway Inhibitor''.
2. IM Francischetti et al. Ixolaris, a novel recombinant tissue factor pathway inhibitor (TFPI) from the salivary gland of the tick, Ixodes scapularis: identification of factor X and factor Xa as scaffolds for the inhibition of factor VIIa/tissue factor complex. Blood 2002 May 15;99(10):3602–3612.
3. RA Nazareth *et al.* Antithrombotic properties of Ixolaris, a potent inhibitor of the extrinsic pathway of the coagulation cascade. Thromb Haemost. 2006 Jul;96(1):7–13.

Licensing Status: Available for licensing.

Licensing Contact: David A. Lambertson, PhD; 301–435–4632; *lambertsond@mail.nih.gov.*

Collaborative Research Opportunity: The NIAID, OTD, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Ixolaris for cancer treatment. Please contact Dana Hsu at 301–496–2644 for more information.

Immortalized Virus-Free Human Placental Cell Lines

Description of Technology: This technology provides immortalized virus-free human placental cell lines. To develop these cell lines, human placental cells were immortalized with adenovirus-origin-minus (ori-)-simian virus-40 (SV40) recombinant viruses containing either wild-type or temperature-sensitive (ts) A mutants of SV40. Cells transformed with the SV40 tsA chimera (HP–A1 and HP–A2), but not the SV40 wild-type chimera (HP–W1), were conditional for

transformation. All three cell lines expressed trophoblast-specific genes, including placental specific genes and the alpha- and beta-subunits of hCG.

These immortalized virus-free human placental cell lines expressing major proteins of human trophoblasts provide efficient *in vitro* models to study placental functions.

Inventor: Janice Y. Chou (NICHD).

Publication: KJ Lei, Y Gluzman, CJ Pan, JY Chou. Immortalization of virus-free human placental cells that express tissue-specific functions. Mol Endocrinol. 1992 May; 6(5):703–712.

Patent Status: HHS Reference No. E–052–2009/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing under a Biological Materials License Agreement.

Licensing Contact: Suryanarayana (Sury) Vepa, PhD, J.D.; 301–435–5020; *vepas@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Child Health and Human Development, Section on Cellular Differentiation, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Immortalized Virus-Free Human Placental Cell Lines. Please contact Joseph Conrad III, PhD at 301–435–3107 or *jmconrad@mail.nih.gov* for more information.

Broadly Applicable Modules for Improved Expression and Detection of Membrane Proteins

Description of Technology: NIH investigators have designed and tested a set of expression modules that are applicable to a wide variety of membrane proteins. Prior to this invention, cloned membrane proteins have sometimes been difficult to detect due to the lack of effective antibodies. Moreover, currently available expression vectors lack the signal sequences, tags, and multiple cloning sites to clone membrane proteins and express them on the cell surface. This invention is the first of its kind to contain all of these elements to facilitate biochemical studies on membrane proteins.

This technology is a set of nucleic acid modules designed for the expression and tagging of membrane proteins in mammalian cells. The module includes a signal peptide, an exchangeable tag, and a multiple cloning site. The gene of a membrane protein may be conveniently inserted into the multiple cloning site, and the signal peptide will target the cloned membrane protein to the cell surface. The tag, in frame with the signal peptide, is either a fluorescent protein or an epitope for a known antibody, both of which enable detection of the protein by several standard biochemical methodologies.

Applications: This technology can provide improved expression and detection of membrane proteins in common laboratory cell lines.

Development Status: Each module contains either one of two different epitope tag, and the expression vector contains either zeocin- or neomycin-resistant markers. There are two sets of module (four vectors) available.

Inventors: Li Lin *et al.* (NIA).

Publication: J Pang, X Zeng, R–P Xiao, EG Lakatta, L Lin. Design, generation, and testing of mammalian expression modules that tag membrane proteins. Protein Science, in press (2009).

Patent Status: U.S. Provisional Application No. 61/142,531 filed 05 Jan 2009 (HHS Reference No. E–016–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Fatima Sayyid, MHPM; 301–435–4521; *Fatima.Sayyid@nih.hhs.gov.*

Collaborative Research Opportunity: The National Institute on Aging, Laboratory of Cardiovascular Sciences, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the technology of mammalian membrane protein expression and detection. Please contact Vio Conley at 301–496–0477 or *conleyv@mail.nih.gov* for more information.

Inhibitors of CD25 To Treat Autoimmune Diseases and Tumors

Description of Technology: This invention discloses therapeutics for the treatment of Multiple Sclerosis, uveitis, and certain cancers by providing methods and compositions for selectively blocking CD25 on T cells or dendritic cells. The therapeutics developed using the current technologies have the potential to exhibit superior specificity and minimal side-effects. In this invention, NIH investigators, for the first time, demonstrate that mature dendritic cells (mDC) use CD25 for trans-presentation of IL–2, and the blockade of CD25 on the surface of mDCs abrogates T cell proliferation. Further, CD25 expression on T cells is not only dispensable for their proliferation, but it also limits effector T cell survival. These observations form the basis for the development of novel therapies for certain cancers and autoimmune disorders.

Applications: Therapeutics for autoimmune diseases; Therapeutics for tumors.

Development Status: Early stage.

Inventors: Bibiana Bielekova *et al.* (NINDS).

Publication: Manuscript submitted for publication.

Patent Status: U.S. Provisional Application No. 61/201,589 filed 12 Dec 2008 (HHS Reference No. E–007–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Suryanarayana (Sury) Vepa, PhD, J.D.; 301–435–5020; *vepas@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Neurological Disorders and Stoke is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize methods of treating multiple sclerosis by administering agents that block the interaction of dendritic cells and T cells via CD25. Please contact Dr. Martha Lubet at 301–435–3120, e-mail: *lubetm@mail.nih.gov* for more information.

Methods for Identifying Breast Cancer Patients for Therapy With mTOR Inhibitors

Description of Technology: This technology relates to methods of identifying individuals with invasive breast cancer who may benefit from treatment with an inhibitor of mammalian Target of Rapamycin (mTOR), particularly those having a gene amplification including chromosome 8p11–12 or a portion thereof. Chromosome 8p11–12 is the second most commonly amplified region in breast cancer cases, after HER2 amplification at chromosome 17. Similar to HER2 amplification, the amplification of 8p11–12 is associated with decreased survival. However, whereas patients diagnosed with HER2 amplifications can be more effectively treated with adjuvant therapy using HER2 inhibitors such as trastuzumab, no specific therapy has been identified for breast cancer patients having an amplification of chromosome 8p11–12.

Investigators at NIH have shown that amplification of chromosome 8p11–12 leads to increased copy number of the gene for eukaryotic translation initiation factor 4E binding protein 1, or EIF4EBP1 and elevated expression of the protein in these breast cancer cell lines. EIF4E is a rate limiting component of a multi-subunit complex that recruits 40S ribosomal subunits to the 5′ end of

mRNAs. EIF4EBP1 interacts and inhibits EIF4E complex assembly and thus, represses translation. In breast cancer cell lines with EIF4EBP1 amplification, the elevated EIF4EBP1 is largely inactivated via hyperphosphorylation. As the phosphorylation of EIF4EBP1 is controlled by mTOR, its hyperphosphorylation can be reversed with rapamycin. Indeed, rapamycin is much more effective in inhibiting the formation of active translational complex and the growth of breast cancer cells with chromosome 8p11–12/EIF4EBP1 amplification. Thus, detection of chromosome 8p11–12 amplification, and/or over-expression or increased phosphorylation of EIF4EBP1 can be used to identify breast cancer patients for treatment with inhibitors of mTOR, such as rapamycin or its derivatives or analogs.

Applications

- Diagnostic kit for measuring DNA amplification of chromosome 8p11–12 and/or EIF4EBP1 to identify breast cancer patients that could benefit from mTOR inhibitor drugs.
- Diagnostic kit for measuring EIF4EBP1 mRNA or protein levels to help identify breast cancer patients that could benefit from mTOR inhibitor drugs.

Advantages

- This molecular diagnostics may optimize the therapeutic use of mTOR inhibitors in the treatment of breast cancer.
- This molecular diagnostics may stratify breast cancer patients for clinical trials with mTOR targeted agents for increased responses.

Development Status: Early stage; Pre-clinical data available.

Market: Breast cancer is the most common cancer among women in the United States, other than skin cancer. It is the second leading cause of cancer death in women, after lung cancer. An estimated 182,460 new cases of invasive breast cancer were expected to occur among women in the U.S. during 2008. Amplification of chromosome 8p11–12 occurs in about 10–15% of the invasive breast cancer cases.

Inventors: Liang Cao and Paul S. Meltzer (NCI).

Publications: None related to this technology.

Patent Status: U.S. Provisional Application No. 61/152,920 filed 16 Feb 2009 (HHS Reference No. E–340–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Surekha Vathyam, PhD; 301–435–4076; *vathyams@mail.nih.gov.*

Collaborative Research Opportunity: The Genetics Branch at National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Method for the Diagnosis and Prognosis of Age-Related Cardiovascular Disorders

Description of Technology: NIH investigators have discovered a method for the diagnosis and prognosis of cardiovascular aging. Current methodologies include the measurement of patient lipid profiles or expression of up to two proteins. In contrast, this technology utilizes the expression levels of a panel of proteins not previously known to be related to cardiovascular aging and may prove to be a more accurate diagnostic or prognostic of cardiovascular aging than currently available tests or it may improve the accuracy of currently available tests when used in concert.

The technology relates to methods for determining susceptibility to having an extremely common age-associated vascular disorder. It also describes the subsequent use of these proteins as markers for disease. While the underlying cellular and molecular mechanisms of age-related vascular disease remain largely undefined, the expression levels of the genes described in this technology have been empirically determined to differ between healthy and age-inflamed arterial tissue. Further, this technology includes a companion mass spectroscopic-based methodology for reproducible quantification of specific expression levels of interest.

Application: Diagnosis of age-related vascular disorder.

Development Status: Early stage.

Inventors: Mingyi Wang *et al.* (NIA).

Patent Status: U.S. Provisional Application No. 61/154,329 filed 20 Feb 2009 (HHS Reference No. E–219–2008/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Fatima Sayyid, MHPM; 301–435–4521; *Fatima.Sayyid@nih.hhs.gov.*

Collaborative Research Opportunity: The National Institute on Aging, Cardiovascular Biology Unit-Vascular Group, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize idea of how to assess and retard accelerated arterial aging and its attendant risks for atherosclerosis and hypertension. Please contact Vio Conley at 301–496–0477 or *conleyv@mail.nih.gov* for more information.

CCR5-Specific Human Monoclonal Antibodies

Description of Technology: The subject invention describes the anti-CCR5 monoclonal antibodies, their fusion protein, conjugates, derivatives, or fragments, DNA sequences encoding such antibodies, host cells containing such DNA sequences, as well as the methods to produce them recombinantly and their pharmacological composition.

It has been demonstrated that the HIV co-receptor CCR5 plays an important role in virus entry. The subject antibodies exhibited neutralization activity against HIV–1 infection by binding to cell associated CCR5 in vitro. Therefore, subject anti-CCR5 antibodies can be useful research materials for the research in HIV/AIDS fields.

Applications: Research tools.

Development Status: In vitro data is available at this time.

Inventors: Dimiter S. Dimitrov and Mei-Yun Zhang (NCI).

Related Publications

1. C Pastori *et al.* Long-lasting CCR5 internalization by antibodies in a subset of long-term nonprogressors: a possible protective effect against disease progression. Blood. 2006 Jun 15;107(12):4825–4833.

2. MY Zhang, B Vu, CC Huang, I Sidirov, V Choudhly, PD Kwong, DS Dimitrov. Identification of human monoclonal antibodies specific for CCR5 from an antibody library derived from HIV-infected long-term non-progressors. Retrovirology. 2006 Dec 21;3 Suppl 1:S61.

3. DS Dimitrov. Virus entry: molecular mechanisms and biomedical applications. Nat Rev Microbiol. 2004 Feb;2(2):109–122.

Patent Status: HHS Reference No. E–297–2006/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing.

Licensing Contact: Sally Hu, PhD; 301–435–5606; *HuS@mail.nih.gov.*

Dated: May 27, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–12873 Filed 6–2–09; 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.

Diagnostic Markers for Melanoma

Description of Technology: This invention relates to diagnostic and prognostic markers for melanoma. It discloses the identification of somatic mutations in genes of the microphthalmia-associated transcription factor (MITF) pathway in patients with melanoma.

Melanoma is an aggressive and often fatal cancer with increasing incidence worldwide. Previous studies have linked the MITF pathway to the progression of melanoma. However, little is known about somatic mutations in genes of the MITF pathway that contribute to the development and progression of melanoma. To assess the role of the MITF pathway in melanoma, NIH investigators evaluated primary and metastatic melanoma samples for the presence of somatic mutations in two genes of the MITF pathway, MITF and SRY (sex determining region Y)—box 10 (SOX10). They identified 16 previously unidentified somatic mutations in these genes. These studies suggest that MITF and SOX10 genes be used as diagnostic markers in human metastatic melanoma.

Applications

- Diagnosis and prognosis of patients with melanoma by detecting any mutations in the MITF or SOX10 gene.
- Selection of therapy for melanoma patient; an MITF inhibitor can be selected for therapy if the patient has any of the disclosed mutations in MITF.

Market: Cancer is the second leading cause of death in the U.S. There is an acute need for cancer biomarkers that can be detected from clinically relevant samples and used for early diagnosis, therapeutic follow-up and prognosis of malignant diseases. Melanoma is the most serious type of cancer of the skin. The percentage of people who develop melanoma has more than doubled in the past 30 years. There are 68,720 estimated new cases and 8,650 estimated deaths from melanoma in the United States in 2009, according to the National Cancer Institute.

Inventors: Yardena R. Samuels *et al.* (NHGRI).

Publication: Cronin JC WJ, Loftus SK, Prickett TD, Wei X, Ridd, Vemula S, Burrell AS, Agrawal NS, Lin JC, Banister CE, Buckhaults P, Rosenberg SA, Bastian BC, Pavan WJ, Samuels Y: Frequent mutations in the MITF pathway in melanoma. Pigment Cell and Melanoma Research 2009, (In Press).

Patent Status: U.S. Provisional Application No. 61/214,415 filed 22 Apr 2009 (HHS Reference No. E–053–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Betty B. Tong, Ph.D; 301–594–6565; *tongb@mail.nih.gov.*

Collaborative Research Opportunity: The National Human Genome Research Institute's Cancer Genetics Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize these newly identified candidate melanoma diagnostic and prognostic markers. Please contact NHGRI's Technology Development Coordinator (TDC) Claire T. Driscoll at *cdriscol@mail.nih.gov* for more information.

T Cells Attacking Cancer: T Cell Receptors That Recognize the Tyrosinase Tumor Antigen

Description of Technology: A problem with current chemotherapy-based cancer treatments is the harsh side-effects associated with many cancer drugs. Thus, there is an urgent need to develop new therapeutic strategies combining fewer side-effects and more specific anti-tumor activity. Adoptive cell transfer (ACT) is a promising new immunotherapeutic approach to treat cancer and other diseases by directing an individual's innate and adaptive immune system to recognize specific disease-associated antigens.

T cell receptors (TCRs) are proteins that recognize antigens in the context of infected or transformed cells and activate T cells to mediate an immune response and destroy abnormal cells. TCRs consist of two domains, one variable domain that recognizes the antigen and one constant region that helps the TCR anchor to the membrane and transmit recognition signals by interacting with other proteins.

Scientists at the National Institutes of Health (NIH) have isolated T cells that recognize the human tyrosinase tumor-associated antigen (TAA) from the tumor infiltrating lymphocytes (TIL) of a melanoma cancer patient. The human tyrosinase antigen is a tumor antigen expressed in a variety of cancers, including skin cancer (melanoma) and brain cancer (glioblastoma). Utilizing the tyrosinase specific T cells, these scientists developed human/mouse hybrid TCRs with enhanced affinity for the tyrosinase TAA. The TCR sequences were modified by making specific amino acid substitutions and replacing certain TCR regions with mouse homologues. These TCRs also showed CD8-independency and, thus, can be expressed in both CD8 and CD4 T cells. T cells expressing these engineered TCRs recognize skin and brain tumor cells in culture. These T cells also exhibit enhanced cytokine induction and better tumor reactivity compared to unmodified TCRs. Previous versions of gene-modified T cells developed by NIH researchers demonstrated objective clinical responses in some cancer patients, which have validated gene-modified T cell immunotherapy as a promising cancer treatment strategy. TCRs directed against the tyrosinase TAA could serve as valuable new immunotherapeutic tools for attacking tumors, especially in patients whose tumors do not express other common TAAs.

Applications

- Immunotherapeutics to treat and/or prevent the recurrence of a variety of human cancers, including melanomas and glioblastomas, that express tyrosinase by transferring T cells engineered with tyrosinase-specific TCRs into cancer patients.

• A drug component of a combination immunotherapy regimen aimed at targeting the specific tumor-associated antigens expressed by the cancer cells of individual patients.

• Immunotherapeutic to treat and/or prevent tumors that do not express other common tumor-associated antigens, such as MART–1, gp100, and NY–ESO–1.

Advantages

• The parent tyrosinase-specific TCR was isolated from tumor infiltrating lymphocytes, so the genetically-modified versions should have an elevated affinity for tyrosinase.

• The tyrosinase-specific T cells recognize skin and brain cancer cells in culture. These T cells are predicted to have broad anti-cancer activity once developed to a clinical level.

• CD8 independency: The tyrosinase-specific TCRs can be expressed in both CD8 and CD4 T cells to maximize the cell-mediated immune response to the tumor.

• The tyrosinase-specific T cells should not be rejected by a patient's immune system since the mouse tyrosinase-recognition enhancing TCR sequences are incorporated into a human TCR backbone.

Market: Cancer continues to be a medical and financial burden on U.S. public health. According to U.S. estimates, cancer is the second leading cause of death with over 565,000 deaths reported in 2008 and almost 1.5 million new cases were reported (excluding some skin cancers) in 2008. In 2007, the NIH estimated that the overall cost of cancer was $219.2 billion dollars and $89 billion went to direct medical costs. Despite our increasing knowledge of oncology and cancer treatment methods, the fight against cancer will continue to benefit from the development of new therapeutics aimed at treating individual patients.

Inventors: Steven A. Rosenberg *et al.* (NCI).

Development Status: This technology is in the pre-clinical stage of development. The inventors plan to develop the technology into clinical grade reagent for a clinical trial if the pre-clinical data continues to show promising results.

Patent Status: U.S. Provisional Application No. 61/147,846 filed 28 Jan 2009 (HHS Reference No. E–043–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Samuel E. Bish, PhD; 301–435–5282; *bishse@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Surgery Branch, Tumor Immunology Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize T Cells Attacking Cancer: T Cell Receptors that Recognize the Tyrosinase Tumor Antigen. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Genomics-Based Diagnostic Assay for Cancer

Description of Technology: Molecular profiling with high throughput assays has gained utility in the management of select cancer patients and several gene expression-based assays are now marketed for improved prognostic accuracy for patients with cancer.

This technology describes a genomics based diagnostic assay for the diagnosis and prognosis of cancer patients. Using a mouse model of breast cancer, the inventors identified a gene expression signature that can predict the outcome for human breast cancer patients with as few as six genes. The gene signature includes a total of 79 cancer survival factor-associated genes and was validated using available genomic test sets that were based on previously conducted human clinical trials. More recently, the six-gene-model was validated for cancers other than breast using multiple, independent, publicly-available human lung cancer datasets. In addition to predicting the outcome of cancer patients, this technology could also be used to stratify patients for further therapy and treat patients by administering therapeutic agents that alter the activity of one of the aforementioned cancer survival factor-associated genes.

Applications

• Methods for cancer diagnosis and prognosis by evaluating expression levels of certain cancer survival factor-associated molecules in patients.

• Treatment of cancer by administering therapeutic agents that alter biological activity of cancer survival factor-associated molecule.

Advantages: Prognostic outcome of breast and lung cancer patients can be identified in as few as six genes.

Development Status: Pre-clinical stage of development.

Inventors: Steven K. Libutti and Mei He (NCI).

Patent Status: U.S. Provisional Application No. 61/152,597 filed 13 Feb 2009 (HHS Reference No. E–023–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Whitney A. Hastings; 301–451–7337; *hastingsw@mail.nih.gov.*

New Weapons To Attack Cancer: T Cell Receptors Designed To Recognize Tumors With Enhanced Affinity

Description of Technology: Given the unpleasant side-effects associated with many cancer drugs, there is an urgent need to develop new therapeutic strategies combining fewer side-effects and more specific anti-tumor activity. Adoptive immunotherapy is a promising new approach to cancer treatment that engineers an individual's innate and adaptive immune system to fight against specific diseases, including cancer.

T cell receptors (TCRs) are proteins that recognize antigens in the context of infected or transformed cells and activate T cells to mediate an immune response and destroy abnormal cells. TCRs consist of two domains, one variable domain that recognizes the antigen and one constant region that helps the TCR anchor to the membrane and transmit recognition signals by interacting with other proteins.

Scientists at the National Institutes of Health (NIH) have developed T cells with an enhanced ability to recognize the tumor associated antigens (TAAs) NY–ESO–1 and MART–1. These T cells were engineered to increase their ability to recognize these TAAs by making small genetic modifications to the TCRs that recognize these TAAs. NY–ESO–1 is a cancer-testis antigen found in normal testis and various tumors. MART–1 is a melanoma antigen found on normal melanocytes and overexpressed in malignant melanomas. Previous versions of gene-modified T cells developed by these researchers to attack tumors demonstrated objective clinical responses in some cancer patients, which validated gene-modified T cell adoptive immunotherapy as a promising cancer treatment strategy. These latest versions of the NY–ESO–1 and MART–1 specific TCRs, designated 1G4 NY–ESO–1 and DMF5 MART–1, were rationally engineered to enhance anti-tumor activity. These TCRs cause T cells to exhibit enhanced cytokine production and increased lysis of tumor cells when stimulated with NY–ESO–1 or MART–1. Infusing these T cells into patients via adoptive immunotherapy could prove to be powerful new tools for attacking tumors.

Applications

• Immunotherapeutics to treat and/or prevent the recurrence of a variety of

human cancers that overexpress the NY–ESO–1 or MART–1 TAA, including melanoma, lung, breast, ovarian, prostate, thyroid, and bladder cancer, by adoptively transferring gene-modified T cells into patients.

• A drug component of a combination immunotherapy regimen aimed at targeting the specific tumor-associated antigens expressed by cancer cells within individual patients.

Advantages

• NY–ESO–1 and MART–1 are overexpressed on a variety of cancers. Thus, this gene-modified TCR immunotherapy has wide applicability to treat a host of cancer types while reducing the side-effects of treatment.

• These latest engineered TCRs have improved affinity for their corresponding TAA compared to previously developed TCRs with modified sequences.

Development Status: These technologies are in clinical development. A clinical protocol (08–C–0121) is being conducted with the enhanced 1G4 NY–ESO–1 TCR.

Market: Cancer continues to be a medical and financial burden on U.S. public health. According to U.S. estimates, cancer is the second leading cause of death with over 565,000 deaths reported in 2008 and almost 1.5 million new cases were reported (excluding some skin cancers) in 2008. In 2007, the NIH estimated that the overall cost of cancer was $219.2 billion dollars and $89 billion went to direct medical costs. Despite our increasing knowledge of oncology and cancer treatment methods, the fight against cancer will continue to benefit from the development of new therapeutics aimed at treating individual patients.

Inventors: Paul F. Robbins *et al.* (NCI).

Publications

1. PF Robbins *et al.* Single and dual amino acid substitutions in TCR CDRs can enhance antigen-specific T cell functions. J Immunol. 2008 May 1;180(9):6116–6131.

2. Y Zhao *et al.* High-affinity TCRs generated by phage display provide CD4+ T cells with the ability to recognize and kill tumor cell lines. J Immunol. 2007 Nov 1;179(9):5845–5854.

Patent Status

• U.S. Provisional Patent Application No. 60/974,872 filed 25 Sep 2007 (HHS Reference No. E–312–2007/0–US–01).

• PCT Patent Application No. PCT/US2008/77333 filed 23 Sep 2008 (HHS Reference No. E–312–2007/1–PCT–01).

Licensing Status: Available for licensing.

Licensing Contact: Samuel E. Bish, PhD; 301–435–5282; *bishse@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Center for Cancer Research, Surgery Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize TCRs that enhance the function of gene-modified T cells. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Steroid Derivatives as Inhibitors of Human Tyrosyl-DNA Phosphodiesterase (Tdp1)

Description of Technology: Tyrosyl-DNA phosphodiesterase (Tdp1) is an enzyme that repairs topoisomerase I (Top1)-mediated DNA damage induced by chemotherapeutic agents and ubiquitous DNA lesions that interfere with transcription. The current technology are steroid derivatives that human inhibit Tdp1.

Currently, there are various types of Top1 inhibitors used in chemotherapy, *e.g.,* camptothecin. However, Tdp1 inhibitors are expected to be effective in combination therapy with Top1 inhibitors for the treatment of cancers. Combining Tdp1 inhibitors with Top1 inhibitors would allow Tdp1 to potentiate the antiproliferative activity of Top1 inhibitors. In addition to Tdp1's effect on Top1, Tdp1 inhibitors can also exhibit antitumor activity independently, as tumors are shown to have excess free radicals, and Tdp1 repairs DNA damage by oxygen radicals.

Applications: It is anticipated that Tdp1 inhibitors in association with Top1 inhibitors can have selective activity toward tumor tissues. Tdp1 inhibitors may exhibit antitumor activity by themselves because tumors have excess free radicals.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Yves Pommier *et al.* (NCI)

Relevant Publication: A manuscript directly related to the above technology will be available as soon as it is accepted for publication.

Patent Status: PCT Application No. PCT/US2008/004541 filed 5 Apr 2008, claiming priority to 5 Apr 2007 (HHS Reference No. E–130–2007/2–PCT–01).

Licensing Status: Available for licensing.

Licensing Contact: Betty Tong, Ph.D.; 301–594–6565; *tongb@mail.nih.gov.*

Collaborative Research Opportunity: The Center for Cancer Research, National Cancer Institute, Laboratory of Molecular Pharmacology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize inhibitors of Tyrosyl-DNA phosphodiesterase (Tdp1). Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Method for Spectroscopic Quantitation of HER2 in Biological Samples

Description of Technology: An important clinical objective in certain cancer patients is the quantitation of HER2. The level of HER2 expression in some tumors correlates with disease stage and severity. For example, HER2 positive breast cancer is a more aggressive disease with a greater likelihood of recurrence, a poorer prognosis, and a decreased chance of survival compared with HER2-negative breast cancer.

This invention discloses a mass spectrometry method for quantitatively measuring HER2 in a variety of biological samples such as tissue, serum, or plasma. This invention is unlike traditional assays that use antibodies for detection of a HER2 and is superior to the current immunohistochemistry methods to stage tumor development. Consequently, a mass spectrometry-based clinical assay could be used to allow physicians to more effectively determine patient treatment. Furthermore, since this technology can also be used to assay formalin-fixed prostate tissue (FFPE) tissues, it could be a useful biomarker for pathology labs.

Applications

• Diagnostic assay for cancer that measures HER2 levels in clinical samples, such as tissues and biological fluids.

• Prognostic assay to determine the stage of cancer and the appropriate cancer treatment.

• Research tool that could be used to correlate HER2 expression with the expression of other proteins.

Market

• This novel *in vitro* diagnostic test for cancer has use in oncology and pathology laboratories of hospitals and commercial clinical laboratories.

• In the United States, almost 1.5 million new cancer cases are expected to be diagnosed in 2009.

Development Status: Pre-clinical stage of development.

Inventors: Thomas P. Conrads (NCI) *et al.*

Relevant Publications

1. BL Hood, MM Darfler, TG Guiel, B Furusato, DA Lucas, BR Ringeisen, IA Sesterhenn, TP Conrads, TD Veenstra, DB Krizman. Proteomic analysis of formalin-fixed prostate tissue. Mol Cell Proteomics 2005 Nov;4(11):1741–1753.

2. DA Prieto, BL Hood, MM Darfler, TG Guiel, DA Lucas, TP Conrads, TD Veenstra, DB Krizman. Liquid tissue™: proteomic profiling of formalin fixed tissues. Biotechniques 2005 Jun;38:S32–S35.

3. DS Kirkpatrick, SA Gerber, SP Gygi. The absolute quantification strategy: A general procedure for the quantification of proteins and post-translational modifications. Methods 2005 Mar;35(3):265–273.

4. AM Hawkridge *et al.* Quantitative mass spectral evidence for the absence of circulating brain natriuretic peptide (BNP–32) in severe human heart failure. Proc Natl Acad Sci USA 2005 Nov 29;102(48):17442–17447.

5. L Anderson and CL Hunter. Quantitative mass spectrometric MRM assays for major plasma proteins. Mol Cell Proteomics 2006 Apr;5(4):573–588.

Patent Status: PCT Application No. PCT/US2007/003478 filed 4 Sep 2008 (HHS Reference No. E–204–2006/0–PCT–01).

Licensing Status: Available for licensing.

Licensing Contact: Whitney Hastings; 301–451–7337; *hastingw@mail.nih.gov.*

Tools To Identify Candidates for Effective Cancer Therapy: Antibodies to Human Asparagine Synthetase

Description of Technology: Scientists at the National Institutes of Health (NIH) have developed peptide-specific polyclonal antibodies against human asparagine synthetase (ASNS), the enzyme that forms asparagine from aspartate using ATP. ASNS serves as a key biomarker for acute lymphoblastic leukemia (ALL) and other malignancies because these cancer cells express little or no ASNS compared to normal cells. As a result, these leukemia cells must acquire asparagine from the bloodstream to survive and proliferate to form tumors. Patients with ALL can be treated with L-asparaginase (L–ASP) to break down asparagine in the body and starve leukemia cells by preventing them from acquiring asparagine. The anti-ASNS antibodies could be used to detect ASNS levels in patient samples to help select patients that could benefit from L–ASP therapy. Studies at the NIH have shown that L–ASP therapy may prove to be a useful treatment for other types of cancer besides leukemia.

Applications

- Diagnostic tool to detect levels of asparagine synthetase (ASNS) in human samples to identify cancer patients that can benefit from L-asparaginase (L–ASP) treatment.
- Screening tool to identify other cancer cell types treatable by L–ASP therapy, such as ovarian cancer cells, which show diminished ASNS levels.
- Research tool to quantitate levels of ASNS in laboratory procedures, including various immunoassays, flow cytometry, and tissue sample analysis.

Advantages: These antibodies have been validated in immunoassays that showed that ASNS expression in a strong predictor of L–ASP efficacy in NCI–60 ovarian cancer cell lines.

Inventors: Paul K. Goldsmith *et al.* (NCI).

Relevant Publications

1. PL Lorenzi *et al.* Asparagine synthetase as a causal, predictive biomarker for L-asparaginase activity in ovarian cancer cells. Mol Cancer Ther. 2006 Nov;5(11):2613–2623.

2. KJ Bussey *et al.* Integrating data on DNA copy number with gene expression levels and drug sensitivities in the NCI–60 cell line panel. Mol Cancer Ther. 2006 Apr;5(4):853–867.

3. PL Lorenzi *et al.* Asparagine synthetase as a predictive biomarker for L-asparaginase activity in ovarian cancer cells. Mol Cancer Ther. 2008 Oct;7(10):3123–3128.

Patent Status: HHS Reference No. E–101–2006/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing under a Biological Materials License Agreement.

Licensing Contact: Samuel E. Bish, Ph.D.; 301–435–5282; *bishse@mail.nih.gov.*

Mouse Model With Targeted Disruption of the Neurofibromatosis Type-1 (Nf1) Gene

Description of Technology: This invention relates to a mouse model having a targeted disruption of the neurofibromatosis type-1 (NF1) gene.

The neurofibromatosis (NF1) gene shows significant homology to mammalian GAP and is an important regulator of the Ras signal transduction pathway. To study the function of NF1 in normal development and to develop a mouse model of NF1 disease, the inventors have used gene targeting in ES cells to generate mice carrying a null mutation at the mouse Nf1 locus. Although heterozygous mutant mice, aged up to 10 months, have not exhibited any obvious abnormalities, homozygous mutant embryos die in utero. Embryonic death is likely attributable to a severe malformation of the heart. Interestingly, mutant embryos also display hyperplasia of neural crest-derived sympathetic ganglia. These results identify new roles for NF1 in development and indicate that some of the abnormal growth phenomena observed in NF1 patients can be recapitulated in neurofibromin-deficient mice. In addition, lethally-irradiated wild type mice transplanted with fetal liver cells taken from NF1 null embryos develop a form of juvenile chronic myelomonocytic leukemia (JMML) that is very similar to what is seen in children with NF1 disease.

Applications

- Research tool in studying some forms of human neuron diseases/injuries in addition to juvenile chronic myelomonocytic leukemia (JMML).
- Testing various therapeutic treatments for this disease.

Inventors: Neal G. Copeland *et al.* (NCI).

Patent Status: HHS Reference No. E–162–2004/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing under a Biological Materials License Agreement.

Licensing Contact: Betty Tong, Ph.D.; 301–594–6565; *tongb@mail.nih.gov.*

Dated: May 27, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–12874 Filed 6–2–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; 2009 NIH Director's Pioneer Award Interviews.

Date: June 15–17, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shan R. McCollough, Program Analyst, Division of Genetics and Developmental Biology, National Institute of General Medical Sciences, Building 45, Center Drive, Room 3AS13F, Bethesda, MD 20892, 301–594–3555, *smccollough@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12230 Filed 6–2–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Environmental Sensors for Personal Exposure Assessment Administrative Meeting.

Date: June 17, 2009.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS Keystone, Keystone Park, 530 Davis Drive, Durham, NC 27713 (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752, *Mcgee1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: May 26, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12878 Filed 6–2–09; 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. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee F—Manpower & Training; NCI–F Manpower & Training Grants.

Date: June 23–24, 2009.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, DC, 1515 Rhode Island Ave, Washington, DC 20005.

Contact Person: Lynn M. Amende, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8105, Bethesda, MD 20892, 301–451–4759, *amendel@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: May 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12880 Filed 6–2–09; 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. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; ARRA SEP T32s.

Date: June 24, 2009.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington DC, 1515 Rhode Island Avenue, NW., Washington, DC, 20005.

Contact Person: Lynn M Amende, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–8328, 301–451–4759, *amendel@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; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: May 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12881 Filed 6–2–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0247]

Food and Drug Administration Transparency Task Force; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to solicit recommendations from interested persons on ways in which FDA can make useful and understandable information about FDA activities and decisionmaking more readily available to the public.

Dates and Times: The public meeting will be held on June 24, 2009, from 8 a.m. to 5 p.m. Persons interested in attending the meeting must register by June 17, 2009. Submit written or electronic comments by August 7, 2009.

Location: The public meeting will be held at the National Transportation Safety Board (NTSB) Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. All comments should be identified with the docket number found in brackets in the heading of this document. Submit electronic registration via e-mail to *Transparency.Meeting@fda.hhs.gov* by close of business on June 17, 2009. Transcripts of the meeting will be available for review at the Division of Dockets Management and on the Internet at *http://www.regulations.gov* approximately 30 days after the meeting.

For Registration to Attend and/or to Participate in the Meeting: If you wish to attend public meeting and/or make an oral presentation at the meeting, you must register by e-mail (see **ADDRESSES**) by close of business on June 17, 2009. When registering, you must provide the following information: (1) Your name, title, company or organization (if applicable), address, phone number, and e-mail address and (2) if you wish to make a presentation, the specific topic or issue to be addressed and the approximate desired length of your presentation. There is no fee to register for the public meeting and registration will be on a first-come, first-served basis. Early registration is recommended because seating is limited. Registration on the day of the public meeting will be permitted on a space-available basis beginning at 7:30 a.m.

We will do our best to accommodate all persons who wish to make a presentation at the meeting. FDA encourages persons and groups having similar interests to consolidate their information for presentation through a single representative. After reviewing the requests to present, we will contact each participant prior to the meeting with the amount of time available and the approximate time the participant's presentation is scheduled to begin. Presenters must then send the final electronic copies of their presentations in Microsoft PowerPoint, Microsoft Word, or Adobe Portable Document Format (PDF) to *Transparency.Meeting@fda.hhs.gov* by June 22, 2009.

If you need special accommodations due to a disability, please inform the contact person (see **FOR FURTHER INFORMATION CONTACT**) by June 17, 2009.

FOR FURTHER INFORMATION CONTACT: Afia Asamoah, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., rm. 2208, Silver Spring, MD 20993, 301–796–4625, FAX: 301–847–3531, e-mail: *Afia.Asamoah@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Transparency promotes accountability and provides information to the public about government activities and initiatives. For FDA, providing information to the public in a timely, user-friendly manner is important to enhance the work of the agency.

Government transparency and accountability is a priority for the Obama Administration. On January 21, 2009, President Obama issued two memoranda to the heads of executive departments and agencies regarding openness in government.[1] In the memorandum on Transparency and Open Government (''Transparency and Open Government memorandum''), the Administration has pledged to take appropriate action, consistent with law and policy, to disclose information to the public rapidly, and in a form that is easily accessible and user friendly. Executive departments and agencies have been charged with harnessing new technologies to make information about agency operations and decisions available online and readily available to the public. Further, executive departments and agencies have been instructed to solicit public input to identify information of greatest use to the public.

In the Transparency and Open Government memorandum, President Obama directed the Chief Technology Officer, in coordination with the Director of the Office of Management and Budget (OMB) and the Administrator of General Services, to coordinate the development of recommendations for an Open Government Directive. This Directive, to be issued by the Director of the OMB, is to instruct executive departments and agencies to take specific actions implementing the principles set forth in this memorandum.

In the memorandum on the Freedom of Information Act (FOIA) (''FOIA memorandum''), the Administration noted that principles embodied in the FOIA express our Nation's commitment to an open government. Executive agencies were instructed to adopt a presumption in favor of disclosure with respect to all decisions involving the FOIA. The Attorney General was directed to issue new guidelines governing the FOIA to the heads of executive departments and agencies. On March 19, 2009, the Attorney General issued guidelines for implementing the FOIA in a memorandum for heads of executive departments and agencies.[2] Regarding the presumption of openness, the Attorney General strongly encouraged agencies to make discretionary disclosures, but also noted

[1] Presidential Documents, Memorandum for the Heads of Executive Departments and Agencies on Transparency and Open Government (January 21, 2009) (74 FR 4685, January 26, 2009), available at *http://www.whitehouse.gov/open/*; Presidential Documents, Memorandum for the Heads of Executive Departments and Agencies on Freedom of Information Act (January 21, 2009) (74 FR 4683, January 26, 2009), available at *http://www.gpo.gov/fdsys/pkg/FR–2009–01–26/pdf/E9–1773.pdf*.

[2] Office of the Attorney General, Memorandum for the Heads of Executive Departments and Agencies on The Freedom of Information Act (March 19, 2009), available at *http://www.usdoj.gov/ag/foia-memo-march2009.pdf*.

that the FOIA's disclosure obligation is not absolute and provides exemptions to protect, for example, national security, personal privacy, privileged records, and law enforcement interests.

In response to both Presidential memoranda, FDA has formed an internal Transparency Task Force to develop recommendations for making useful and understandable information about FDA activities and decisionmaking more readily available to the public in a timely manner and in a user-friendly format, in a manner compatible with the agency's goal of protecting confidential information, as appropriate. As a part of this process, the Task Force is holding two public meetings and establishing a public docket to seek public input on these issues. The first public meeting to solicit input from interested stakeholders on improving agency transparency, the subject of this meeting notice, will be held on June 24, 2009. The Task Force is exploring additional ways to seek input through the Internet, and is planning to hold a second public meeting in the fall of 2009. A meeting announcement describing the scope of the second meeting will be published in the **Federal Register**.

II. Scope of Meeting

FDA is interested in receiving comments from the public on issues related to transparency. The comments should focus on ways in which the agency should provide information to the public about what FDA is doing, the bases for the agency's decisions, and the processes used to make agency decisions. In addition to general suggestions about the ways the agency can inform the public, we are specifically interested in soliciting input on the following questions:

1. How can the agency better explain its operations, activities, processes, and decisionmaking?

2. What specific information should FDA provide about agency operations, activities, processes, and decisionmaking, including:
   a. Enforcement actions?
   b. Product approvals?
   c. Recalls?
   d. Other actions?

3. What tools, techniques, processes, or other mechanisms should FDA use to be more effective in providing useful and understandable information?
   a. Internet tools?
   b. Tools to improve targeting and effectiveness of communications, including risk communication?
   c. Improvements to the Freedom of Information Act processes?
   d. Other?

4. What, if any, legislative or regulatory changes are needed to improve FDA's ability to provide useful and understandable information to the public?

5. As FDA becomes more transparent, what information should remain confidential in order to promote key internal and external policy goals, such as preserving patient privacy, and how, in these cases, should FDA explain the importance of confidentiality?

6. What metrics should FDA use to gauge the effectiveness of its transparency efforts?

III. Request for Comments

Regardless of attendance at the public meeting, interested persons may submit written or electronic comments (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. To permit time for interested persons to submit data, information, or views on this subject, submit comments by August 7, 2009. Where relevant, you should annotate and organize your comments to identify the specific question addressed by the question number referenced in the previous text. Please identify comments with the docket number assigned to this notice, which is found at the heading of this document. Received comments may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday. FDA is also exploring additional electronic means for the public to provide comments and feedback on this topic.

IV. Transcripts

Transcripts of the meeting will be available for review approximately 30 days after the meeting at *http://www.regulations.gov* and at the Division of Dockets Management (see **ADDRESSES**).

Dated: May 29, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–12902 Filed 6–2–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR); Notice of National Conversation on Public Health and Chemical Exposures Kick-Off Meeting

Time and Date: 8:30 a.m.–3:30 p.m., Friday, June 26, 2009.

Location: Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 600 people.

Purpose: This meeting will launch the National Conversation on Public Health and Chemical Exposures, a collaborative initiative to identify and prioritize actions for revitalizing the nation's public health approach to chemical exposures.

Meeting Agenda: The meeting will include a plenary session featuring Dr. Howard Frumkin, Director of NCEH/ATSDR as well as other guests. The plenary will provide an overview of this stakeholder and public involvement initiative. Breakout sessions will provide participants with opportunities to discuss specific issues related to public health and chemical exposures.

National Conversation Project: The 18 month long National Conversation will offer many opportunities for involvement, including: Expert working groups, regional and local face-to-face public meetings, and Web-based discussions. The resulting action agenda will outline steps for NCEH/ATSDR and other institutions to take to better protect public health from harmful chemical exposures. NCEH/ATSDR is sponsoring this project.

Contact for Additional Information: If you would like to receive additional information on this meeting and initiative, please send your contact information to: *nationalconversation@cdc.gov.*

Dated: May 26, 2009.

James R. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–12900 Filed 6–2–09; 8:45 am]

BILLING CODE 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. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Prevention Research Small Grant Program.

Date: June 15–16, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Irina Gordienko, PhD, Scientific Review Officer, Scientific Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm. 7073, Bethesda, MD 20892, 301–594–1566, *gordienkoiv@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; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: May 26, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12879 Filed 6–2–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors of the NIH Clinical Center. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the Clinical Center, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors of the NIH Clinical Center.

Date: June 18, 2009.

Time: 8:15 a.m. to 5:30 p.m.

Agenda: To review and evaluate the Clinical Center's Nursing Department.

Place: National Institutes of Health, Building 10, 10 Center Drive, Room 4–2551, Bethesda, MD 20892.

Contact Person: David K Henderson, MD, Deputy Director for Clinical Care, Office of the Director, Clinical Center, National Institutes of Health, Building 10, Room 6–1480, Bethesda, MD 20892, (301) 496–3515.

Dated: May 26, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12877 Filed 6–2–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel—Health Disparities.

Date: June 25, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20817.

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, National Institutes of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 960, Bethesda, MD 20892, 301–496–8775, *grossmanrs@mail.nih.gov.*

Dated: May 26, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12875 Filed 6–2–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Use of N-Acetyl-Mannosamine and Derivatives Thereof to Treat Muscle Wasting Diseases and Kidney Diseases Related to Hyposialylation

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in U.S. Patent Application No. 60/932,451, filed May 31, 2007, now abandoned, [HHS Ref. No. E–217–2007/0–US–01]; PCT Patent Application No. PCT/US2008/006895, filed May 30, 2008, [HHS Ref. No. E–217–2007/0–PCT–02], both of which are entitled, ''N-Acetyl-Mannosamine as a Therapeutic Agent'' (Inventors: Drs. Marjan Huizing, William A. Gahl, Irini Manoli, and Enriko Klootwijk, NHGRI) to New Zealand Pharmaceuticals, Ltd., having an office in at Palmerston North, New Zealand. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to the use of N-Acetyl-Mannosamine or derivatives thereof for the treatment of muscle wasting diseases and kidney diseases related to hyposialylation.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before August 3, 2009 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Steven Standley, PhD, Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4074; Facsimile: (301) 402–0220; E-mail: *sstand@od.nih.gov.*

SUPPLEMENTARY INFORMATION: N-Acetyl Mannosamine is a precursor for the synthesis of sugar molecules known as sialic acids which play an important role in specific biological processes such as cellular adhesion, cellular communication and signal transduction. Lack of sialic acids also play an important role in disease processes such as cancer, inflammation and immunity.

This invention relates to methods of administering N-Acetyl Mannosamine or its derivative (to produce sialic acid in patients who are deficient in the sugar molecule) to treat muscular atrophy including hereditary inclusion body myopathy (HIBM) and distal myopathy with rimmed vacuoles (DMRV, or Nonaka myopathy). Certain kidney conditions such as those arising from hyposialytion of kidney membranes may be treated by this method as well.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 27, 2009.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E9–12858 Filed 6–2–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2009–0012]

Privacy Act of 1974, as Amended; Computer Matching Program (Department of Homeland Security United States Citizenship and Immigration Services (DHS/USCIS)-New Jersey Department of Labor and Workforce Development (NJLWD))

AGENCY: United States Citizenship and Immigration Services, DHS.

ACTION: Notice of the renewal of an existing computer matching program, which is scheduled to expire on July 6, 2009.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces the renewal of a computer matching program that Department of Homeland Security United States Citizenship and Immigration Services (DHS/USCIS) is currently conducting with New Jersey Department of Labor and Workforce Development.

DATES: The matching program will become effective 30 days after publication of this notice in the **Federal Register**. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (703) 483–2999 or writing to the Privacy Office, Department of Homeland Security, Washington, DC 20528. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: For general questions please contact Donald Hawkins (202–272–8000), USCIS Privacy Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for, and receiving, Federal benefits. Section 7201of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. DHS Computer Matches Subject to the Privacy Act

DHS/USCIS has taken action to ensure that all of DHS's computer matching programs comply with the requirements of the Privacy Act, as amended.

C. Purpose of the Matching Program

The purpose of this agreement is to provide the NJLWD with electronic access to immigration status information contained within DHS/USCIS' Verification Information System (VIS). This access will enable the NJLWD to determine whether an applicant is eligible for benefits under the Unemployment Compensation (UC) program administered by NJLWD.

D. Authority for Conducting the Matching Program

NJLWD seeks access to the information contained in the DHS–USCIS VIS database to execute its obligations under Section 1137 of the Social Security Act and New Jersey Statute 43:21–4.

USCIS maintains the VIS database pursuant to Section 121 of the Immigration Reform and Control Act (IRCA) of 1986, Public Law 99–603, as amended by the Personal Responsibility and Work Opportunity Reconciliation

Act of 1996 (PRWORA), Public Laws 104–193 Stat. 2168 (1996). These statutes require USCIS to make VIS available to State agencies which administer related benefits.

E. Categories of Records and Individuals Covered by the Matching Program

The USCIS VIS System of Records Notice (SORN) details the records and individuals relevant to this agreement. The VIS SORN can be found at 73 FR 75445, December 11, 2008.

Categories of Individuals Covered

This system contains information on individuals, both U.S. citizens and non-U.S. citizens covered by provisions of the Immigration and Nationality Act of the United States including but not limited to individuals who have been lawfully admitted to the United States, individuals who have been granted U.S. citizenship and individuals who have applied for other immigration benefits pursuant to 8 U.S.C. 1103 *et seq.* In addition, it contains information on cohabitants and relatives of subjects of SAVE background investigations conducted for OPM. This system also contains information on individuals, both U.S. citizens and non-U.S. citizens, whose employers have submitted to the E-Verify program their identification information. This system also contains information on individuals, both U.S. citizens and non-U.S. citizens, who have been victims of identity theft and have chosen to lock their Social Security number from further use in the E-Verify program.

Categories of Records Covered

- Data originating from the USCIS Central Index System (CIS), including the following information about the individual who comes before USCIS: Alien Registration Number (A–Number), name (last, first, middle), date of birth, date entered United States (entry date), country of birth, class of admission code, File Control Office code, Social Security Number, Admission Number (I–94 Number), provision of law code cited for employment authorization, office code where the authorization was granted, date employment authorization decision issued, date employment authorization may begin (start date), date employment authorization expires (expiration date), and date employment authorization was denied (denial date).
- Data originating from the U.S. Customs and Border Protection Treasury Enforcement Communications System (TECS), including the following information about the individual: A–Number, name (last, first, middle), date alien's status was changed (status change date), date of birth, class of admission code, date admitted until, country of citizenship, port of entry, date entered United States (entry date), departure date, I–94 Number, visa number, and transaction link to passport photographs contained in TECS.
- Data originating from the Redesigned Naturalization Automated Casework System (RNACS). RNACS is a database that includes information from individuals who have filed applications for naturalization, citizenship, or to replace naturalization certificates under the Immigration and Nationality Act, as amended, and/or who have submitted fee payments with such applications. The naturalization records in the RNACS database house information from 1986 to 1996. Information that identifies individuals named above, *e.g.,* name, address, date of birth, and alien registration number (A-Number). Records in the system may also include information such as Date documents were filed or received in CIS, Status, class of admission codes, and locations of record.
- Data originating from the Computer Linked Applications Information Management System (CLAIMS 4) including the following information about the individual: name (first, last), date of birth, Social Security Number, and naturalization date.
- Data originating from the USCIS Biometric Storage System (BSS), including: Receipt number, name (last, first, middle), date of birth, country of birth, A-Number, form number (for example Form I–551, Lawful Permanent Resident card, or Form I–766, Employment Authorization Document), expiration date, and photo.
- Data originating from the USCIS Computer Linked Application Information Management System (CLAIMS 3), including: Receipt number, name (last, first, middle), date of birth, country of birth, class of admission code, A-Number, I–94 number, date entered United States (entry date), and 'valid-to' date.
- Data originating from the U.S. Immigration and Customs Enforcement (ICE) Student and Exchange Visitor Information System (SEVIS), including: SEVIS Identification Number (SEVIS ID), name (last, first, middle), date of birth, country of birth, class of admission code, I–94 number, date entered United States (entry date), and 'valid-to' date.
- Data originating from the Social Security Administration (SSA), including: Confirmation of employment eligibility based on SSA records, tentative non-confirmation of employment eligibility and the underlying justification for this decision, and Final non-confirmation of employment eligibility.
- Information collected from the benefit applicant by a Federal, State, local or other benefit-issuing agency to facilitate immigration status verification that may include the following about the benefit applicant: Receipt Number, A-Number, I–94 Number, name (last, first, middle), date of birth, user case number, DHS document type, DHS document expiration date, SEVIS ID and visa number.
- Information collected from the benefit-issuing agency about users accessing the system to facilitate immigration status verification that may include the following about the agency: Agency name, address, point(s) of contact, contact telephone number, fax number, e-mail address, type of benefit(s) the agency issues (*i.e.* unemployment insurance, educational assistance, driver licensing, etc.).
- Information collected from the benefit-issuing agency about the individual agency user including: Name (last, first, middle), phone number, fax number, e-mail address, user ID for users within the agency.
- System-generated response, as a result of the SAVE verification process including: Case verification number, entire record in VIS database as outlined above, including all information from CIS, SEVIS, TECS, and CLAIMS 3 and with the exception of the biometric information (photo) from BSS, and immigration status (*e.g.,* Lawful Permanent Resident).
- Information collected from the employee by the employer user to facilitate employment eligibility verification may include the following about the Individual employee: Receipt number, visa number, United States or foreign passport number, passport card number, A-Number, I–94 Number, name (last, first, middle initial, maiden), Social Security Number, date of birth, date of hire, claimed citizenship status, acceptable form I–9 document type, acceptable form I–9 Document expiration date, and passport, passport card, or visa photo.
- Information collected about the employer, including: Company name, physical address, employer identification number, North American Industry Classification System code, Federal contracting agency, Federal contract identifier, number of employees, number of sites, parent company or corporate company, name of contact(s), phone number, fax number, and e-mail address.

• Information collected about the employer user (*e.g.,* identifying users of the system at the employers), including: name, phone number, fax number, e-mail address, and user ID.

• System-generated response information, resulting from the E-Verify employment eligibility verification process, including: Case verification number; VIS generated response: employment authorized, tentative non-confirmation, case in continuance, final non-confirmation, employment unauthorized, or DHS No Show; disposition data from the employer includes resolved unauthorized/terminated, self terminated, invalid query, employee not terminated, resolved authorized, and request additional verification, which includes why additional verification is requested by the employer user.

• Information collected directly from individuals who have been the victim of identity theft who wish to prevent or deter further use of stolen identities in E-Verify, including: Police reports, name, Social Security Number, street address, e-mail address, and other identity authentication information relevant to preventing or deterring further use of stolen identities.

F. Inclusive Dates of the Matching Program

The matching program will become effective 30 days after publication of this notice in the **Federal Register**. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

Dated: May 27, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, U.S. Department of Homeland Security.

[FR Doc. E9–12945 Filed 6–2–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2009–0011]

Privacy Act of 1974, as Amended; Computer Matching Program (Department of Homeland Security United States Citizenship and Immigration Services (DHS/USCIS)-New York Department of Labor (NY–DOL))

AGENCY: United States Citizenship and Immigration Services, DHS.

ACTION: Notice of the renewal of an existing computer matching program, which is scheduled to expire on July 6, 2009.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces the renewal of a computer matching program that Department of Homeland Security United States Citizenship and Immigration Services (DHS/USCIS) is currently conducting with New York Department of Labor (NY–DOL).

DATES: The matching program will become effective 30 days after publication of this notice in the **Federal Register**. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (703) 483–2999 or writing to the Privacy Office, Department of Homeland Security, Washington, DC 20528. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: For general questions please contact Donald Hawkins (202–272–8000), USCIS Privacy Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. DHS Computer Matches Subject to the Privacy Act

DHS/USCIS has taken action to ensure that all of DHS's computer matching programs comply with the requirements of the Privacy Act, as amended.

C. Purpose of the Matching Program

The purpose of this agreement is to provide the NY–DOL with electronic access to immigration status information contained within DHS/USCIS' Verification Information System (VIS). This access will enable the NY–DOL to determine whether an applicant is eligible for benefits under the Unemployment Compensation (UC) program administered by NY–DOL.

D. Authority for Conducting the Matching Program

NY–DOL seeks access to the information contained in the DHS–USCIS VIS database to execute its obligations under Section 1137 of the Social Security Act (42 U.S.C. 1320b–7(a), *et seq.*) and New York Unemployment Insurance Law Article 18, Title 7, section 590.

USCIS maintains the VIS database pursuant to Section 121 of the Immigration Reform and Control Act (IRCA) of 1986, Public Law 99–603, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Laws 104–193 Stat. 2168 (1996). These statutes require USCIS to make VIS available to State agencies which administer related benefits.

E. Categories of Records and Individuals Covered by the Matching Program

The USCIS VIS System of Records Notice (SORN) details the records and individuals relevant to this agreement. The VIS SORN can be found at 73 FR 75445, December 11, 2008.

Categories of Individuals Covered

This system contains information on individuals, both U.S. citizens and non-

U.S. citizens covered by provisions of the Immigration and Nationality Act of the United States including but not limited to individuals who have been lawfully admitted to the United States, individuals who have been granted U.S. citizenship and individuals who have applied for other immigration benefits pursuant to 8 U.S.C. 1103 *et seq.* In addition, it contains information on cohabitants and relatives of subjects of SAVE background investigations conducted for OPM. This system also contains information on individuals, both U.S. citizens and non-U.S. citizens, whose employers have submitted to the E-Verify program their identification information. This system also contains information on individuals, both U.S. citizens and non-U.S. citizens, who have been victims of identity theft and have chosen to lock their Social Security number from further use in the E-Verify program.

Categories of Records Covered

• Data originating from the USCIS Central Index System (CIS), including the following information about the individual who comes before USCIS: Alien Registration Number (A-Number), name (last, first, middle), date of birth, date entered United States (entry date), country of birth, class of admission code, File Control Office code, Social Security Number, Admission Number (I–94 Number), provision of law code cited for employment authorization, office code where the authorization was granted, date employment authorization decision issued, date employment authorization may begin (start date), date employment authorization expires (expiration date), and date employment authorization was denied (denial date).

• Data originating from the U.S. Customs and Border Protection Treasury Enforcement Communications System (TECS), including the following information about the individual: A-Number, name (last, first, middle), date alien's status was changed (status change date), date of birth, class of admission code, date admitted until, country of citizenship, port of entry, date entered United States (entry date), departure date, I–94 Number, visa number, and transaction link to passport photographs contained in TECS.

• Data originating from the Redesigned Naturalization Automated Casework System (RNACS). RNACS is a database that includes information from individuals who have filed applications for naturalization, citizenship, or to replace naturalization certificates under the Immigration and Nationality Act, as amended, and/or who have submitted fee payments with such applications. The naturalization records in the RNACS database house information from 1986 to 1996. Information that identifies individuals named above, *e.g.,* name, address, date of birth, and alien registration number (A-Number). Records in the system may also include information such as Date documents were filed or received in CIS, Status, class of admission codes, and locations of record.

• Data originating from the Computer Linked Applications Information Management System (CLAIMS 4) including the following information about the individual: Name (first, last), date of birth, Social Security Number, and naturalization date.

• Data originating from the USCIS Biometric Storage System (BSS), including: receipt number, name (last, first, middle), date of birth, country of birth, A-Number, form number (for example Form I–551, Lawful Permanent Resident card, or Form I–766, Employment Authorization Document), expiration date, and photo.

• Data originating from the USCIS Computer Linked Application Information Management System (CLAIMS 3), including: receipt number, name (last, first, middle), date of birth, country of birth, class of admission code, A-Number, I–94 number, date entered United States (entry date), and 'valid-to' date.

• Data originating from the U.S. Immigration and Customs Enforcement (ICE) Student and Exchange Visitor Information System (SEVIS), including: SEVIS Identification Number (SEVIS ID), name (last, first, middle), date of birth, country of birth, class of admission code, I–94 number, date entered United States (entry date), and 'valid-to' date.

• Data originating from the Social Security Administration (SSA), including: Confirmation of employment eligibility based on SSA records, tentative non-confirmation of employment eligibility and the underlying justification for this decision, and Final non-confirmation of employment eligibility.

• Information collected from the benefit applicant by a Federal, State, local or other benefit-issuing agency to facilitate immigration status verification that may include the following about the benefit applicant: Receipt Number, A-Number, I–94 Number, name (last, first, middle), date of birth, user case number, DHS document type, DHS document expiration date, SEVIS ID and visa number.

• Information collected from the benefit-issuing agency about users accessing the system to facilitate immigration status verification that may include the following about the agency: agency name, address, point(s) of contact, contact telephone number, fax number, e-mail address, type of benefit(s) the agency issues (*i.e.* unemployment insurance, educational assistance, driver licensing, etc.).

• Information collected from the benefit-issuing agency about the individual agency user including: name (last, first, middle), phone number, fax number, e-mail address, user ID for users within the agency.

• System-generated response, as a result of the SAVE verification process including: case verification number, entire record in VIS database as outlined above, including all information from CIS, SEVIS, TECS, and CLAIMS 3 and with the exception of the biometric information (photo) from BSS, and immigration status (*e.g.,* Lawful Permanent Resident).

• Information collected from the employee by the employer user to facilitate employment eligibility verification may include the following about the Individual employee: receipt number, visa number, United States or foreign passport number, passport card number, A-Number, I–94 Number, name (last, first, middle initial, maiden), Social Security Number, date of birth, date of hire, claimed citizenship status, acceptable form I–9 document type, acceptable form I–9 Document expiration date, and passport, passport card, or visa photo.

• Information collected about the employer, including: company name, physical address, employer identification number, North American Industry Classification System code, Federal contracting agency, Federal contract identifier, number of employees, number of sites, parent company or corporate company, name of contact(s), phone number, fax number, and e-mail address.

• Information collected about the employer user (*e.g.,* identifying users of the system at the employers), including: Name, phone number, fax number, e-mail address, and user ID.

• System-generated response information, resulting from the E-Verify employment eligibility verification process, including: Case verification number; VIS generated response: Employment authorized, tentative non-confirmation, case in continuance, final non-confirmation, employment unauthorized, or DHS No Show; disposition data from the employer includes resolved unauthorized/terminated, self terminated, invalid query, employee not terminated, resolved authorized, and request

additional verification, which includes why additional verification is requested by the employer user.

• Information collected directly from individuals who have been the victim of identity theft who wish to prevent or deter further use of stolen identities in E-Verify, including: police reports, name, Social Security Number, street address, e-mail address, and other identity authentication information relevant to preventing or deterring further use of stolen identities.

F. Inclusive Dates of the Matching Program

The matching program will become effective 30 days after publication of this notice in the **Federal Register**. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

Dated: May 27, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, U.S. Department of Homeland Security.

[FR Doc. E9–12936 Filed 6–2–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2009–0010]

Privacy Act of 1974, as Amended; Computer Matching Program (Department of Homeland Security United States Citizenship and Immigration Services (DHS/USCIS)-Massachusetts Division of Unemployment Assistance (MA–DUA))

AGENCY: United States Citizenship and Immigration Services, DHS.

ACTION: Notice of the renewal of an existing computer matching program, which is scheduled to expire on July 6, 2009.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces the renewal of a computer matching program that Department of Homeland Security United States Citizenship and Immigration Services (DHS/USCIS) is currently conducting with MA–DUA.

DATES: The matching program will become effective 30 days after publication of this notice in the **Federal Register**. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (703) 483–2999 or writing to the Privacy Office, Department of Homeland Security, Washington, DC 20528. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: For general questions please contact Donald Hawkins (202–272–8000), USCIS Privacy Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for, and receiving, Federal benefits. Section 7201of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. DHS Computer Matches Subject to the Privacy Act

DHS/USCIS has taken action to ensure that all of DHS's computer matching programs comply with the requirements of the Privacy Act, as amended.

C. Purpose of the Matching Program

The purpose of this Agreement is to provide the MA–DUA with electronic access to immigration status information contained within DHS/USCIS' Verification Information System (VIS). This access will enable the MA–DUA to determine whether an applicant is eligible for benefits under the Unemployment Compensation (UC) program administered by MA–DUA.

D. Authority for Conducting the Matching Program

MA–DUA seeks access to the information contained in the DHS–USCIS VIS database to execute its obligations under Section 1137 of the Social Security Act (42 U.S.C. 1320b–7(a), *et seq.*) and Mass. Gen. Laws ch.151A section 25(h).

USCIS maintains the VIS database pursuant to Section 121 of the Immigration Reform and Control Act (IRCA) of 1986, Public Law 99–603, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Laws 104–193 Stat. 2168 (1996). These statutes require USCIS to make VIS available to State agencies which administer related benefits.

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have been victims of identity theft and have chosen to lock their Social Security number from further use in the E-Verify program.

Categories of Records Covered

• Data originating from the USCIS Central Index System (CIS), including the following information about the individual who comes before USCIS: Alien Registration Number (A-Number), name (last, first, middle), date of birth, date entered United States (entry date), country of birth, class of admission code, File Control Office code, Social Security Number, Admission Number (I–94 Number), provision of law code cited for employment authorization, office code where the authorization was granted, date employment authorization decision issued, date employment authorization may begin (start date), date employment authorization expires (expiration date), and date employment authorization was denied (denial date).

• Data originating from the U.S. Customs and Border Protection Treasury Enforcement Communications System (TECS), including the following information about the individual: A-Number, name (last, first, middle), date alien's status was changed (status change date), date of birth, class of admission code, date admitted until, country of citizenship, port of entry, date entered United States (entry date), departure date, I–94 Number, visa number, and transaction link to passport photographs contained in TECS.

• Data originating from the Redesigned Naturalization Automated Casework System (RNACS). RNACS is a database that includes information from individuals who have filed applications for naturalization, citizenship, or to replace naturalization certificates under the Immigration and Nationality Act, as amended, and/or who have submitted fee payments with such applications. The naturalization records in the RNACS database house information from 1986 to 1996. Information that identifies individuals named above, *e.g.,* name, address, date of birth, and alien registration number (A-Number). Records in the system may also include information such as Date documents were filed or received in CIS, Status, class of admission codes, and locations of record.

• Data originating from the Computer Linked Applications Information Management System (CLAIMS 4) including the following information about the individual: name (first, last), date of birth, Social Security Number, and naturalization date.

• Data originating from the USCIS Biometric Storage System (BSS), including: Receipt number, name (last, first, middle), date of birth, country of birth, A-Number, form number (for example Form I–551, Lawful Permanent Resident card, or Form I–766, Employment Authorization Document), expiration date, and photo.

• Data originating from the USCIS Computer Linked Application Information Management System (CLAIMS 3), including: Receipt number, name (last, first, middle), date of birth, country of birth, class of admission code, A-Number, I–94 number, date entered United States (entry date), and ''valid-to'' date.

• Data originating from the U.S. Immigration and Customs Enforcement (ICE) Student and Exchange Visitor Information System (SEVIS), including: SEVIS Identification Number (SEVIS ID), name (last, first, middle), date of birth, country of birth, class of admission code, I–94 number, date entered United States (entry date), and ''valid-to'' date.

• Data originating from the Social Security Administration (SSA), including: Confirmation of employment eligibility based on SSA records, tentative non-confirmation of employment eligibility and the underlying justification for this decision, and Final non-confirmation of employment eligibility.

• Information collected from the benefit applicant by a Federal, State, local or other benefit-issuing agency to facilitate immigration status verification that may include the following about the benefit applicant: Receipt Number, A-Number, I–94 Number, name (last, first, middle), date of birth, user case number, DHS document type, DHS document expiration date, SEVIS ID and visa number.

• Information collected from the benefit-issuing agency about users accessing the system to facilitate immigration status verification that may include the following about the agency: Agency name, address, point(s) of contact, contact telephone number, fax number, e-mail address, type of benefit(s) the agency issues (*i.e.* unemployment insurance, educational assistance, driver licensing, *etc.*).

• Information collected from the benefit-issuing agency about the individual agency user including: Name (last, first, middle), phone number, fax number, e-mail address, user ID for users within the agency.

• System-generated response, as a result of the SAVE verification process including: Case verification number, entire record in VIS database as outlined above, including all information from CIS, SEVIS, TECS, and CLAIMS 3 and with the exception of the biometric information (photo) from BSS, and immigration status (*e.g.,* Lawful Permanent Resident).

• Information collected from the employee by the employer user to facilitate employment eligibility verification may include the following about the Individual employee: Receipt number, visa number, United States or foreign passport number, passport card number, A-Number, I–94 Number, name (last, first, middle initial, maiden), Social Security Number, date of birth, date of hire, claimed citizenship status, acceptable form I–9 document type, acceptable form I–9 Document expiration date, and passport, passport card, or visa photo.

• Information collected about the employer, including: Company name, physical address, employer identification number, North American Industry Classification System code, Federal contracting agency, Federal contract identifier, number of employees, number of sites, parent company or corporate company, name of contact(s), phone number, fax number, and e-mail address.

• Information collected about the employer user (*e.g.,* identifying users of the system at the employers), including: Name, phone number, fax number, e-mail address, and user ID.

• System-generated response information, resulting from the E-Verify employment eligibility verification process, including: Case verification number; VIS generated response: Employment authorized, tentative non-confirmation, case in continuance, final non-confirmation, employment unauthorized, or DHS No Show; disposition data from the employer includes resolved unauthorized/terminated, self terminated, invalid query, employee not terminated, resolved authorized, and request additional verification, which includes why additional verification is requested by the employer user.

• Information collected directly from individuals who have been the victim of identity theft who wish to prevent or deter further use of stolen identities in E-Verify, including: Police reports, name, Social Security Number, street address, e-mail address, and other identity authentication information relevant to preventing or deterring further use of stolen identities.

F. Inclusive Dates of the Matching Program

The matching program will become effective 30 days after publication of this notice in the **Federal Register**. The matching program will continue for 18

months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

Dated: May 27, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, U.S. Department of Homeland Security.

[FR Doc. E9–12947 Filed 6–2–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Notice to Aliens Included in the United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program; Collection of Alien Biometric Data upon Exit From the United States at Air Ports of Departure

AGENCY: National Protection and Programs Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice informs the public of the implementation of United States Visitor and Immigrant Status Indicator Technology (US–VISIT) Program exit pilot programs at two air ports of entry as required by the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009. The 2009 appropriations act limited the Department of Homeland Security's funding until US–VISIT conducts certain exit pilots programs and submits a report to Congress. This notice also announces the location of the exit pilot programs and describes the process by which the exit pilot programs will be evaluated by the Department of Homeland Security (DHS). The airport locations are Atlanta, Georgia, and Detroit, Michigan.

FOR FURTHER INFORMATION CONTACT: Helen deThomas, US–VISIT, Department of Homeland Security, 245 Murray Drive, SW., Washington, DC, 20020; (202) 298–5200 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Department of Homeland Security (DHS) established US–VISIT in accordance with several congressional mandates requiring DHS to create an integrated, automated entry-exit system that records the arrival and departure of aliens, verifies aliens' identities, and authenticates aliens' travel documents through the comparison of biometric identifiers.

On April 24, 2008, DHS published a notice of proposed rulemaking (NPRM) to establish an exit program at all air and sea ports of departure in the United States. *See* 73 FR 22056. The NPRM proposed that aliens subject to US–VISIT entry requirements would provide biometric information to commercial air and vessel carriers before departing the United States at air and sea ports of entry. The commercial air and vessel carriers would be required to collect and transmit the biometric information to DHS. The rule would have exempted, at that time, certain private and small carriers.

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Public Law 110–329, 122 Stat. 3574, 3669–70 (Sept. 30, 2008) (2009 Appropriations Act) subsequently provided:

> That no funding under this heading shall be obligated for implementation of a final air exit solution pursuant to the notice of proposed rulemaking (DHS–2008–0039) published on April 24, 2008, until the Committees on Appropriations of the Senate and the House of Representatives receive a report on pilot tests of the air exit solution, which shall be reviewed by the Government Accountability Office, and which shall test at least two scenarios: (a) Where the airlines collect and transmit biometric exit data as proposed in the notice of proposed rulemaking and (b) where U.S. Customs and Border Protection collects such information at the departure gates.

DHS is conducting an additional pilot in which the Transportation Security Administration (TSA) collects and transmits biometric exit data at an airport security checkpoint. The air exit pilots are being conducted by CBP at the Detroit Metropolitan Wayne County Airport (DTW) and by TSA at the Hartsfield-Jackson Atlanta International Airport (ATL) for a 30–45 day period and began on May 28, 2009.

Pilot 1: CBP at the Departure Gate

CBP officers are conducting a pilot at the departure gate. The purpose of this pilot is to evaluate the impact of collecting biometric information at or near the departure gate from aliens who are subject to US–VISIT biometric requirements departing the United States for foreign destinations. The biometric information consists of one or more electronic fingerprints captured using a mobile or portable device. The biographic information includes travel document information, such as name, date of birth, document issuance type, country, and number—all of which are contained in the document's machine-readable zone (MRZ) of a machine-readable travel document (MRTD). CBP is following defined processes that minimize interference with the air carrier boarding process. This pilot will capture the cycle time necessary for the additional verification and collection of this biometric data from international travelers.

Pilot 2: TSA at the Security Checkpoint

TSA is conducting a pilot at the security checkpoint. The purpose of this pilot is to evaluate the impact of collecting biometric information at the TSA security checkpoints from those aliens who are subject to US–VISIT biometric requirements departing the United States for foreign destinations. Those travelers with international destinations are directed to an area within the checkpoint where the biographic and biometric information is collected. The biometric information consists of one or more electronic fingerprints captured using a mobile device. The biographic information includes travel document information, such as name, date of birth, document issuance type, country, and number—all of which are contained in the document's MRZ of the MRTD. This pilot will capture the cycle time necessary for the additional verification and collection of this biometric data from international travelers.

Air Exit Pilots Evaluation

The goal of the pilots is to provide data in support of an evaluation of each alternative to inform the final rule, supporting an optimal air exit solution. The pilots have the following additional objectives:

- Evaluate identity verification and exit-recording solutions with existing port operations and infrastructure.
- Record the exit from the United States of each alien encountered during the exit pilots who is subject to US–VISIT biometric requirements at the designated airports.
- Update the individual records of each alien encountered during the exit pilots who is subject to US–VISIT biometric requirements in the Automated Biometric Identification System (IDENT) and the Arrival and Departure Information System (ADIS) with departure encounter information.

DHS began collecting biographic and biometric data at the two exit pilot program locations identified herein on May 28, 2009. A third exit pilot program location to test the air carrier NPRM preferred solution will be determined at a later date.[1] DHS will evaluate the exit

[1] To date, no commercial air carrier has offered to test the preferred solution in the proposed rule. This third air exit pilot program would biometrically and biographically verify the identity of each alien subject to US–VISIT biometric requirements departing the United States using a designated commercial air carrier at designated airport(s).

pilot programs, including the methods and processes for collecting the required information, after the pilots are completed.

Notice of Requirements for Biometric Collection From Aliens

In accordance with Immigration and Nationality Act (INA) section 215, as implemented in 8 CFR 215.8 and INA section 235, as implemented in 8 CFR 235.1, DHS hereby provides a notice of the requirements for biometric collection from aliens, as follows:

(a) *Aliens subject to notice:* Aliens subject to the conditions of entry specified at 8 CFR 235.1(f)(1)(ii) are subject to this notice and may be required to provide biometric information at the time of departure from the United States.

(b) *Aliens exempt:* This notice does not apply to (i) aliens admitted on A–1, A–2, C–3 (except for attendants, servants, or personal employees of accredited officials), G–1, G–2, G–3, G–4, NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, or NATO–6 visas, unless the Secretary of State and the Secretary of Homeland Security jointly determine that a class of such aliens should be subject to this notice; (ii) children under the age of 14; (iii) persons over the age of 79; (iv) classes of aliens the Secretary of Homeland Security and the Secretary of State jointly determine shall be exempt; or (v) an individual alien whom the Secretary of Homeland Security, the Secretary of State, or the Director of Central Intelligence determines shall be exempt. Aliens admitted on A–1, A–2, C–3 (except for attendants, servants, or personal employees of accredited officials), G–1, G–2, G–3, G–4, NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, or NATO–6 visas who are no longer in such status on the date of departure, however, are subject to the departure requirements of this notice. Aliens exempted from paragraph (a) who are no longer in an exempted status on the date of departure are subject to the departure requirements of this notice.

(c) *Biometric information:* All aliens subject to this notice shall, at the time of departure from designated air ports, submit electronic fingerprints and provide their travel documents as requested at the departure inspection locations.

(d) *Airport(s) designated for US–VISIT inspection at time of alien departure:*

- Atlanta, Georgia (Hartsfield-Jackson Atlanta International Airport).
- Detroit, Michigan (Detroit Metropolitan Wayne County Airport).

Paperwork Reduction Act

US–VISIT, through TSA and CBP, is requiring aliens to provide biometric data in certain limited circumstances described above. This requirement is considered an information collection requirement under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). The Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act, has previously approved this information collection for use. The OMB control number for this collection is 1600–0006. The fingerprint collection covered by 1600–0006 is unchanged from previously published documentation.

Privacy

The US–VISIT air exit pilots use, collect, and share personally identifiable information (PII) in accordance with the US–VISIT/IDENT System of Records Notice (SORN), applicable privacy impact assessments (PIAs), privacy laws, regulations, guidance, agreements, and best practices to ensure that individual privacy is appropriately protected. The US–VISIT Privacy Office published a comprehensive PIA on May 27, 2009, that includes the assessment for the elements being tested in the air exit pilots that addresses the use, collection, and retention of PII associated with the pilots, identifies possible risks and proposes mitigating strategies. The PIA was reviewed and approved by the Director of US–VISIT and the DHS Chief Privacy Officer. The PIA was published on the DHS public Web site at *http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_usvisit_air_exit.pdf.*

The DHS Chief Privacy Officer, in conjunction with the US–VISIT Privacy Officer, exercises oversight of the US–VISIT program to ensure that the information maintained by US–VISIT is appropriately protected under privacy laws and guidance. DHS has established procedures to ensure the security, accuracy, relevance, timeliness, and completeness of all information maintained by US–VISIT. Information is safeguarded in terms of applicable rules and policies, including DHS policies for automated systems security and access. Only those persons with an official need to know information for the performance of their duties have access. Records of all individuals, including non-U.S. citizens, are protected in accordance with applicable privacy laws and regulations.

Individuals, including non-U.S. citizens, who wish to contest or seek an amendment of their records may submit an inquiry via the DHS Traveler Redress Inquiry Program (DHS TRIP), a Web-based portal available at *http://www.dhs.gov/trip,* or by writing to the US–VISIT program office and sending a fax to (202) 298–5201 or an e-mail to *usvisitprivacy@dhs.gov.* A mailed inquiry may be sent to the following address: Privacy Officer, US–VISIT, National Protection and Programs Directorate, Department of Homeland Security, Washington, DC 20528. However, because security concerns occasionally cause mail delays, the other communication methods are preferred and may result in quicker responses. The request should include the requester's full name, current address, date of birth, and a detailed explanation of the amendment sought. More information on redress procedures can be found at *http://www.dhs.gov/xtrvlsec/programs/editorial 0436.shtm.* If the matter cannot be resolved by the US–VISIT Privacy Officer, further appeal for resolution may be made to the DHS Chief Privacy Officer at the following address: Chief Privacy Officer, U.S. Department of Homeland Security, Washington, DC 20528; telephone (202) 282–8000; or fax (202) 772–5036.

Robert A. Mocny,

Director, US–VISIT.

[FR Doc. E9–12939 Filed 6–2–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0001; FEMA Form 646–0–1 (new number assignment replacing FEMA Form 85–3), National Defense Executive Reserve Personal Qualifications Statement.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of

respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before July 6, 2009.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: National Defense Executive Reserve Personal Qualifications Statement.

Type of information collection: Revision of a currently approved information collection.

OMB Number: 1660–0001.

Form Titles and Numbers: FEMA Form 646–0–1 (new number assignment replacing FEMA Form 85–3), National Defense Executive Reserve Personal Qualifications Statement.

Abstract: FEMA Form 646–0–1, National Defense Executive Reserve Personal Qualifications Statement, is an application form that is used by Federal departments and agencies to fill NDER vacancies. To become a Reservist, individuals with the requisite qualifications must complete the application form. FEMA serves as the NDER coordinator for all Federal departments and agencies, ensuring that applicants are not already serving in a Federal department or agency sponsored unit and determines the Federal department or agency best suited for the applicant.

Affected Public: ''Individuals or households''.

Estimated Number of Respondents: 10.

Frequency of Response: Once.

Estimated Average Hour Burden per Respondent: .5 hours.

Estimated Total Annual Burden Hours: 5 hours.

Estimated Cost: There is no annual reporting or recordkeeping costs associated with this collection.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–12828 Filed 6–2–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–907, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–907, Request for Premium Processing Service; OMB Control No. 1615–0048.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 5, 2009, at 74 FR 6171, allowing for a 60-day public comment period. USCIS did not receive any comments.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 6, 2009. This process is conducted in accordance with 5 CFR 1320.10.

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 Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0048 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Request for Premium Processing Service.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–907. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. This form will be used by USCIS to provide employers the opportunity to request faster processing of certain employment-based petitions and applications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

- Filing by Mail 97,000 responses at 30 minutes (.50) per response.
- Electronically 3,000 responses at 20 minutes (.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 49,500 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/fdmspublic/component/main.*

We may also be contacted at: USCIS, Regulatory Products Division, 111

Massachusetts Avenue, NW., Washington, DC 20529–2210, telephone number 202–272–8377.

Dated: *May 29, 2009.*

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–12953 Filed 6–2–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; Reinstatement, with change, of a previously approved collection for which approval has expired; OMB No. 1660–0054; FEMA Form 080–2, AFG Application (General Questions and Narrative), FEMA Form 080–3, Activity Specific Questions for AFG Vehicle Applicants, FEMA Form 080–4, Activity Specific Questions for AFG Operations and Safety Applications, FEMA Form 080–5, Activity Specific Questions for Fire Prevention and Safety Applicants, FEMA Form 080–6, Fire Prevention and Safety Research and Development Application (Questions and Narrative), FEMA Form 080–7, Staffing for Adequate Fire and Emergency Response (General Questions for All Applicants), FEMA Form 080–8, Staffing for Adequate Fire and Emergency Response Hiring of Firefighters Application (Questions and Narrative), and FEMA Form 080–10, Staffing for Adequate Fire and Emergency Response Recruitment and Retention of Volunteer Firefighters Application (Questions and Narrative).

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before July 6, 2009.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Assistance to Firefighters Grant Applications.

Type of information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 1660–0054.

Form Titles and Numbers: FEMA Form 080–2, AFG Application (General Questions and Narrative), FEMA Form 080–3, Activity Specific Questions for AFG Vehicle Applicants, FEMA Form 080–4, Activity Specific Questions for AFG Operations and Safety Applications, FEMA Form 080–5, Activity Specific Questions for Fire Prevention and Safety Applicants, FEMA Form 080–6, Fire Prevention and Safety Research and Development Application (Questions and Narrative), FEMA Form 080–7, Staffing for Adequate Fire and Emergency Response (General Questions for All Applicants), FEMA Form 080–8, Staffing for Adequate Fire and Emergency Response Hiring of Firefighters Application (Questions and Narrative), and FEMA Form 080–10, Staffing for Adequate Fire and Emergency Response Recruitment and Retention of Volunteer Firefighters Application (Questions and Narrative).

Abstract: Information sought under this submission will comprise the grant applications for AFG, FPS and SAFER. The information is necessary to assess the needs of the applicants as well as the benefits to be obtained from the use of funds.

Affected Public: Not-for-profit, State, Local and Tribal Government.

Estimated Number of Respondents: 51,500.

Frequency of Response: On occasion.

Estimated Average Hour Burden per Respondent: 4.38 hours.

Estimated Total Annual Burden Hours: 225,725 hours.

Estimated Cost: There is no annual reporting or recordkeeping cost associated with this collection.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–12830 Filed 6–2–09; 8:45 am]

BILLING CODE 9110–64–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3304–EM; Docket ID FEMA–2008–0018]

Minnesota; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Minnesota (FEMA–3304–EM), dated March 26, 2009, and related determinations.

DATES: *Effective Date:* May 22, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective May 22, 2009.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–12856 Filed 6–2–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1830–DR; Docket ID FEMA–2008–0018]

Minnesota; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota (FEMA–1830–DR), dated April 9, 2009, and related determinations.

DATES: *Effective Date:* May 22, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 22, 2009.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–12853 Filed 6–2–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1839–DR; Docket ID FEMA–2008–0018]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA–1839–DR), dated May 15, 2009, and related determinations.

DATES: *Effective Date:* May 21, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 15, 2009.

Humphreys County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–12854 Filed 6–2–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1838–DR; Docket ID FEMA–2008–0018]

West Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1838–DR), dated May 15, 2009, and related determinations.

DATES: *Effective Date:* May 27, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 15, 2009.

McDowell and Raleigh Counties for Individual Assistance and Public Assistance.

Mercer County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant).

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–12851 Filed 6–2–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1833–DR; Docket ID FEMA–2008–0018]

Georgia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–1833–DR), dated April 23, 2009, and related determinations.

DATES: *Effective Date:* May 21, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 23, 2009.

Baker and Early Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–12849 Filed 6–2–09; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1836–DR; Docket ID FEMA–2008–0018]

Alabama; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA–1836–DR), dated May 8, 2009, and related determinations.

DATES: *Effective Date:* May 26, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 8, 2009.

Lamar County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–12850 Filed 6–2–09; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO320000 L19900000 PO0000]

Extension of Approved Information Collection, OMB Control Number 1004–0025

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-Day notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request approval to continue the collection of information under the General Mining Law. The Office of Management and Budget (OMB) previously approved this information collection, and assigned it the control number 1004–0025.

DATES: Comments on the proposed information collection must be received by August 3, 2009, to be assured of consideration.

ADDRESSES: You may mail comments to: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C St., NW., Washington, DC 20240 (Attention: 1004–0025). You may also comment electronically at the following address: *Jean_Sonneman@blm.gov.*

FOR FURTHER INFORMATION CONTACT: You may contact Rick Deery, Solid Minerals Group, on (202) 452–0355 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Deery.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)). This notice identifies an information collection that the BLM will be submitting to OMB for approval.

This collection is contained in 43 CFR parts 3860 and 3870. The BLM will request a 3-year term of approval for this information collection activity. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection

burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany the BLM's submission of the information collection requests to OMB.

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

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: 43 CFR part 3860—Mineral Patent Applications and 43 CFR part 3870—Adverse Claims, Protests and Conflicts.

OMB Control Number: 1004–0025.

Summary: On its face, the General Mining Law (30 U.S.C. 29, 30, and 39) authorizes a holder of an unpatented claim for hardrock minerals to apply for fee title (patent) to the Federal land (as well as minerals) embraced in the claim. Since 1994, a rider on the annual appropriation bill for the Department of the Interior has prevented the BLM from processing mineral patent applications unless the applications were grandfathered under the initial legislation. This moratorium does not affect mineral surveys, contests, or protests to existing mineral patent applications. Therefore, this information collection continues to be necessary.

Frequency of Collection: Once.

Description of Respondents: Owners of unpatented mining claims and mill sites upon the public lands, and of reserved mineral lands of the United States, National Forests, and National Parks.

Total Annual Responses: 28 mineral survey applications. 3 protests or adverse claims.

Total Annual Burden Hours for Mineral Survey Applicants: 28.

Total Annual Burden Hours for Protests or Adverse Claims: 6.

Total Annual Burden for All Respondents: 34 hours.

Jean Sonneman,

Acting Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. E9–12872 Filed 6–2–09; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection; Activities Under OMB Review; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of a currently approved collection (OMB No. 1006–0005).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces the Bureau of Reclamation (we, our, or us) has forwarded the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428, OMB Control Number: 1006–0005. This ICR is required under the Reclamation Reform Act of 1982 (RRA), Acreage Limitation Rules and Regulations, 43 CFR part 426, and Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land, 43 CFR part 428. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comments must be received on or before July 6, 2009 to assure maximum consideration.

ADDRESSES: You may send written comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile to (202) 395–5806 or e-mail to *OIRA_DOCKET@omb.eop.gov.* A copy of your comments should also be directed to the Bureau of Reclamation, Attention: 84–53000, P.O. Box 25007, Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: Stephanie McPhee at: (303) 445–2897.

SUPPLEMENTARY INFORMATION:

Title: Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

Abstract: This information collection requires certain landholders (direct or indirect landowners or lessees) and farm operators to complete forms demonstrating their compliance with the acreage limitation provisions of Federal reclamation law. Responses are required to retain or obtain a benefit. These forms are submitted to districts that use the information to establish each landholder's status with respect to landownership limitations, full-cost pricing thresholds, lease requirements, and other provisions of Federal reclamation law. In addition, forms are submitted by certain farm operators to provide information concerning the services they provide and the nature of their farm operating arrangements. All landholders whose entire westwide landholdings total 40 acres or less are exempt from the requirement to submit RRA forms. Landholders who are ''qualified recipients'' have RRA forms submittal thresholds of 80 acres or 240 acres depending on the district's RRA forms submittal threshold category where the land is held. Only farm operators who provide multiple services to more than 960 acres held in trusts or by legal entities are required to submit forms.

Changes to the RRA Forms and the Instructions to Those Forms.

Minor editorial changes were made to the currently approved RRA forms and the instructions to those forms prior to the 60-day comment period initiated by the notice published in the **Federal Register** (73 FR 63509, Oct. 24, 2008). Those changes were designed to assist the respondents by increasing their understanding of the forms, clarifying the instructions for use when completing the forms, and clarifying the information that is required to be submitted to the districts with the forms. We received no public comments from the 60-day public comment period. The proposed revisions to the RRA forms will be included starting in the 2010 water year.

Frequency: Annually.

Respondents: Landholders and farm operators of certain lands in our projects, whose landholdings exceed specified RRA forms submittal thresholds.

Estimated Total Number of Respondents: 15,279.

Estimated Number of Responses per Respondent: 1.02.

Estimated Total Number of Annual Responses: 15,585.

Estimated Total Annual Burden on Respondents: 11,522 hours.

Estimate of Burden for Each Form:

Form No.	Burden estimate per form (in minutes)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
Form 7–2180	60	4,124	4,206	4,206
Form 7–2180EZ	45	425	434	326
Form 7–2181	78	1,205	1,229	1,598
Form 7–2184	45	32	33	25
Form 7–2190	60	1,620	1,652	1,652
Form 7–2190EZ	45	96	98	74
Form 7–2191	78	777	793	1,031
Form 7–2194	45	4	4	3
Form 7–21PE	75	146	149	186
Form 7–21PE–IND	12	4	4	1
Form 7–21TRUST	60	882	900	900
Form 7–21VERIFY	12	5,434	5,543	1,109
Form 7–21FC	30	214	218	109
Form 7–21XS	30	144	147	74
Form 7–21FARMOP	78	172	175	228
Totals	.....	15,279	15,585	11,522

Comments.

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the RRA forms. A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** (73 FR 63509, Oct. 24, 2008). No public comments were received.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

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.

Dated: April 21, 2009.

Richard W. Rizzi,

Acting Director, Program and Policy Services, Denver Office.

[FR Doc. E9–12924 Filed 6–2–09; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement; Prisoners Harbor Coastal Wetland Restoration Project, Channel Islands National Park; Notice of Availability

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 81–190 as amended), the National Park Service, Department of Interior, has prepared a Draft Environmental Impact Statement (EIS) for Prisoners Harbor Coastal Wetland Restoration. The Draft EIS evaluates alternative methods for ecological restoration and cultural resource protection. Appropriate mitigation measures are incorporated, and an ''environmentally preferred'' course of action is identified. The ''action'' alternatives are based upon information gained during public scoping, as well as park values, effective restoration strategies, National Park Service policy, and applicable laws.

Background: Prisoners Harbor and Canada del Puerto creek are located on the north side of Santa Cruz Island, Santa Barbara County, California. The project's area of potential effect encompasses the lower ¾ mile of Canada del Puerto extending to the 19-acre triangular shaped Prisoners Harbor area. This area includes a beach, cobble bar, lower stream channel and the Park's largest coastal floodplain wetland highly-valued archeological resources, historic resources associated with the island's ranching history, and stands of invasive eucalyptus trees along the riparian corridor in Canada del Puerto. Historically the Prisoners Harbor area has been extensively modified by direct filling of the coastal floodplain wetland, placement of a berm on the west bank of the associated Canada del Puerto creek, and introduction of the invasive fennel, eucalyptus, and kikuyu grass. Combined, these extensive modifications resulted in the loss of approximately 50%, or 3 acres, of wetland, altered channel hydraulics essentially disconnecting the creek from its floodplain wetland, and inadvertently directed the erosive power of flood flows toward highly-valued archeological resources and caused the loss of approximately 20 acres of southern oak riparian woodland. The purpose of the project is to restore a functional ecosystem including wetland and riparian components, protect archeological resources and the historic scale house, control invasive species, and provide a compatible visitor experience. Under current conditions the coastal wetland habitat is degraded

and relegated to 3 acres. A berm created without engineering specifications in the 1960's inadvertently directs the erosive power of flood flows toward highly-valued archeological resources, and during high flows flood water breaches the creek at a low water crossing and threatens the historic warehouse and other park infrastructure. There is no on-site visitor interpretation signage in the project area. Channel Islands National Park has determined that certain restoration activities at the project site will improve the condition of resources and the visitor experience.

Range of Alternatives: This Draft EIS describes and analyzes one No Action Alternative and two Action Alternatives. The No Action Alternative (Alternative A) would continue current management practices. Alternatives B and C (action alternatives) contain a varying mix of four main components: (1) Ecological restoration, including removing fill and controlling invasive species; (2) restoring hydraulic function; (3) protecting sensitive archeological resources; and (4) improving the visitor experience. Each of the action alternatives incorporates the following elements: (1) Remove fill from the former wetland; (2) remove a section of berm along the west bank of Canada del Puerto creek; (3) remove cattle corrals; (4) relocate scale house to pre-1960's location; (5) construct a protective barrier around a highly-valued archeological site; (6) remove eucalyptus from the lower Canada del Puerto, (7) control other priority invasive species; and (7) improve the visitor experience of coastal wetlands, associated wildlife, and historic human uses.

Alternative B (agency-preferred) would restore 3.1 acres of palustrine wetlands and deepwater habitat by removing approximately 13,000 yds ^{3} 20% fill material, removing all cattle corrals, relocating the scale house out of the 100-year floodplain to its pre-1960s location adjacent to the warehouse, and removing 250 ft of berm thereby reconnecting the creek to its floodplain. Alternative B would protect highly valued archeological resources by constructing a protective barrier around a portion of the archeological site. Twenty acres of riparian woodland would be restored by removing 1700 eucalyptus trees and controlling invasive fennel and kikuyu grass in the riparian corridor. Alternative B would improve the visitor experience through the installation of interpretive signage and placement of benches in wildlife viewing areas.

Alternative C would restore 2.1 acres of palustrine wetlands and deepwater habitat by removing approximately 11,000 yds ^{3} 20% fill material, retaining two cattle corrals adjacent to the access road, removing 250 ft of berm thereby reconnecting the creek to its floodplain, and also would restore 20 acres of riparian woodland by removing 1700 eucalyptus trees and controlling invasive fennel and kikuyu grass in the riparian corridor. The scale house would remain in its current location within the 100-year floodplain. Alternative C would protect highly valued archeological resources by constructing a protective barrier around a portion of the archeological site. Finally, this alternative would improve the visitor experience through the placement of interpretive signage.

Scoping and Public Involvement: A site visit was held in April 2007 to solicit preliminary issues and concerns regarding the project concept. The agenda for the meeting included introductions, site orientation with an informal walking tour of the site, followed by a round-robin discussion with opportunity to ask questions and express concerns. A Notice of Intent (NOI) to prepare an EIS and conduct public scoping was published in the **Federal Register** on June 11, 2008. On June 12, 2008, a press release announcing public scoping was distributed to the Ventura County Star and the Santa Barbara News-Press, as well as 73 other media outlets, including newspapers, radio stations, and television stations. The press release explained the public scoping process, announced two public open houses, and provided the Web sites for Channel Islands National Park and NPS park planning. The NOI and press release were posted on the park Web site. Notices of the public scoping open houses were printed in the Ventura County Star and Santa Barbara News-Press on June 23, 2008. Approximately 240 public scoping announcements were distributed including details of date, time, and location of the public open houses. These outreach activities elicited pertinent information from interested individuals, agencies, and organizations, which aided the alternatives formulation and environmental impact analysis processes.

Comments: Copies of the Draft EIS will be sent to affected Federal, Tribal, State and local government agencies, to interested parties, and those requesting copies. Paper and digital copies (compact disc) of the document will also be available at park headquarters and at local libraries. The complete document will be posted on the Channel Islands National Park Web site (*http://www.nps.gov/chis/*) and on the NPS Planning, Environment and Public Comment Web site (*http://parkplanning.nps.gov/chis*). All written comments must be postmarked or transmitted no later than 60 days from the publication date of EPA's notice of filing in the **Federal Register**—immediately upon confirmation of this date, this information will be posted on the project Web sites and announced via regional and local press media.

Written comments may be submitted by letter sent to: Channel Islands National Park, Prisoners Harbor Coastal Wetland Restoration, 1901 Spinnaker Drive, Ventura, CA 93001 (or may be transmitted electronically at *http://parkplanning.nps.gov/chis*). Two public meetings will be held approximately 30 days after publication of this notice in the **Federal Register.** Questions regarding status of project planning may be directed to Paula Power (805) 658–5784 (or via e-mail *paula_power@nps.gov*). All comments are maintained in the administrative record and will be available for public review at Channel Islands National Park Headquarters. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Decision Process: Following the analysis of all comments received concerning the Draft EIS, at this time it is anticipated that the Final EIS would be completed in the summer 2009. The availability of the final document will be similarly announced in the **Federal Register**, and also publicized via local and regional press media, direct mailings, and Web site postings. Not sooner than thirty days after the distribution of the Final EIS, a Record of Decision may be executed (at this time it is anticipated a recommended decision would be developed in fall 2009). As a delegated EIS the approving official responsible for the final decision is the Regional Director, Pacific West Region. Subsequently, the official responsible for implementing the approved wetland and restoration plan will be the Superintendent, Channel Islands National Park.

Dated: March 9, 2009.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. E9–12725 Filed 6–2–09; 8:45 am]

BILLING CODE 4310–FY–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement; Yosemite Institute Environmental Education Campus; Yosemite National Park; Mariposa and Tuolumne Counties, California; Notice of Availability

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the Department of the Interior, National Park Service (NPS), has prepared a Draft Environmental Impact Statement (Draft EIS) identifying and evaluating three alternatives for managing the Yosemite Institute Environmental Education Campus in Yosemite National Park, California. The Draft EIS for the proposed Environmental Education Campus identifies and analyzes two ''action'' alternatives and a ''no-action'' alternative. The full spectrum of foreseeable environmental consequences are assessed and suitable mitigation strategies are considered; an ''environmentally preferred'' course of action is also identified. Concurrently completion of the EIS process will fulfill the public review requirements of § 106 of the National Historic Preservation Act.

Range of Alternatives: Under the ''no-action'' alternative (Alternative 1), there would be no change in the management direction, program, location, or conditions at the Crane Flat campus. Necessary maintenance and repairs would continue, but no major rehabilitation of facilities, construction of buildings, or improvements to utilities would occur. There would be no change in size of facilities—the number of student and staff beds (76 and 8, respectively) would remain the same. The overall number of students in the park per session would remain the same (361 students), with the majority of students in commercial lodging in Yosemite Valley.

Under both ''action'' alternatives, new energy-efficient, sustainable facilities would be constructed to accommodate more students on campus, rather than using additional commercial lodging in Yosemite Valley. These improvements would provide a safer environment and provide more opportunities for students from diverse backgrounds to participate in the program. All facilities would achieve fire, health, safety and accessibility standards.

Under Alternative 2, the Crane Flat campus would be redeveloped, doubling its capacity (to 154 students, 14 staff), and greatly reducing reliance upon commercial lodging in Yosemite Valley. Most campus buildings would be removed and replaced. Historic structures on the campus would be retained, and some new facilities would be constructed. Utilities would be upgraded to conserve water, meet additional capacity, and achieve health, safety, and accessibility standards. The new campus would be reconstructed largely in its existing location (shifting the campus cabins upslope, away from a sensitive meadow). Under Alternative 3 (agency-preferred), a new campus would be located at Henness Ridge. New facilities would be constructed to accommodate 224 students and 20 staff and to meet park operational needs.

SUPPLEMENTARY INFORMATION: Public scoping was initiated in 2002; the park conducted two public meetings on June 26 and June 29, 2002 at the East Auditorium in Yosemite Valley. A Notice of Intent to prepare a Draft EIS for the ''Crane Flat Environmental Education Campus Redevelopment'' published in the **Federal Register** on September 23, 2002 established a 45-day scoping period (comments were accepted through November 14, 2002). During the scoping period, NPS held discussions and briefings with: tribes, park staff, elected officials, public service organizations, and other interested members of the public. The feedback received helped broaden the range of alternatives to include consideration of additional sites for the campus; a Scoping Summary is available and may be obtained by contacting the park as noted below.

Copies of the Draft EIS will be distributed to the general public, sent directly to those who have requested it, as well as to congressional delegations, state and local elected officials, federal agencies, tribes, organizations, local businesses, public libraries, and the news media. Reference copies will be available at park headquarters in Yosemite Valley, the Office of Environmental Planning and Compliance at the NPS Maintenance Complex in El Portal, and at local and regional libraries in El Portal, Mariposa, Oakhurst, Sonora, San Francisco, and Los Angeles. The complete document will be posted on the Yosemite National Park Web page at *http:/www.nps.gov/yose/parkmgmt/planning.htm.* Additional copies can be requested by contacting the park through one of the methods listed below. Public meetings and project site visits will be scheduled during the public review period; details regarding specific dates, locations and time will be posted on the park's planning Web page (address above) and announced via local and regional news media.

Review and Comment: All written comments must be postmarked or transmitted not later than July 15, 2009 (this information will also be posted on the project Web site and announced via local and regional media). All comments received will become available for public review in the park's planning and compliance office. Before including your address, phone number, e-mail address, or other personal identifying information, 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. All comments should be addressed to the Superintendent, Yosemite National Park, and may be mailed to Superintendent, Yosemite National Park, Attn: Environmental Education Campus DEIS, P.O. Box 577, Yosemite, California 95389 (comments may also be sent by facsimile to (209) 379–1294, Attn: Environmental Planning and Compliance, YIEEC; or transmitted electronically to *Yose_Planning@nps.gov* with YIEEC typed in the subject line).

Decision Process: All comments as may be received on the draft EIS will be analyzed and fully considered in preparing the Final EIS, which is anticipated to be available for public release in Fall-Winter 2009. Availability of the Final EIS will be announced in the **Federal Register** and via local and regional press media and direct mailings. Following a minimum 30-day waiting period, a Record of Decision will be prepared and notice of approval similarly published in the **Federal Register.** As a delegated EIS, the official responsible for approval of the project is the Regional Director, Pacific West Region; subsequently the official responsible for project implementation would be the Superintendent, Yosemite National Park.

Dated: February 11, 2009.

George J. Turnbull,

Acting Regional Director, Pacific West Region.

Editorial Note: This document was received in the Office of the Federal Register on May 28, 2009.

[FR Doc. E9–12726 Filed 6–2–09; 8:45 am]

BILLING CODE 4312–FY–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDB00000 L11500000.CB0000 LXSS024D0000: 4500007706]

Notice of Public Meeting: Resource Advisory Council to the Boise District, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise District Resource Advisory Council (RAC), will hold a meeting as indicated below.

DATES: The meeting will be held July 8, 2009, at the Boise District Offices beginning at 9 a.m. and adjourning at 4 p.m. Members of the public are invited to attend, and comment periods will be held during the course of the day.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Idaho. Items on the agenda will include update on development of the Gateway West Electrical Transmission Lines, and accompanying Environmental Impact Statement (EIS); an update on the status of Economic Recovery and Reinvestment Act of 2009 (ARRA) projects in the Boise District; discussions with RAC Members about how they could be involved in implementation of the Owyhee Public Lands Management Act of 2009, and in review of Alternatives for the EIS for the Four Rivers Field Office Resource Management Plan (RMP). Discussions will also be held about existing subgroups and the charters. Hot Topics will be discussed by the District Manager. Field Office managers will provide highlights for discussion on activities in their offices. Agenda items and location may change due to changing circumstances. All RAC meetings are open to the public. The public may present written or oral comments to members of the Council. At each full RAC meeting time is provided in the agenda for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM Coordinator as provided above.

Dated: May 26, 2009.

Aden L. Seidlitz,

District Manager.

[FR Doc. E9–12899 Filed 6–2–09; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–464 and 731–TA–1160 (Preliminary)]

Prestressed Concrete Steel Wire Strand From China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigation No. 701–TA–464 (Preliminary) and antidumping duty investigation No. 731–TA–1160 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of prestressed concrete steel wire strand (''PC strand''), provided for in subheading 7312.10.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and that are alleged to be subsidized by the Government of China. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) and 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) and 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by July 13, 2009. The Commission's views are due at Commerce within five business days thereafter, or by July 20, 2009.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* May 27, 2009.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on May 27, 2009, by American Spring Wire Corp. (Bedford Heights, OH); Insteel Wire Products Co. (Mt. Airy, NC); and Sumiden Wire Products Corp. (Dickson, TN).

Participation in the investigations and public service list. Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register.** Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 17, 2009, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Mary Messer (202–205–3193) not later than June 12, 2009, to arrange for their appearance. Parties in support of the imposition of antidumping and countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 22, 2009, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: May 28, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–12835 Filed 6–2–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–662]

In the Matter of Certain Tunable Laser Chips, Assemblies, and Products Containing Same; Notice of a Commission Determination To Terminate the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

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 December 19, 2008 based on a complaint filed on November 7, 2008, by JDS Uniphase Corporation (''JDSU'') of Milpitas, California. 73 FR 77839–40 (December 19, 2008). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain tunable laser chips, assemblies, and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 6,658,035 and 6,687,278. The complaint named numerous respondents and further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

On May 19, 2009, the Commission issued notice of its determination not to review an initial determination (Order No. 15) terminating the last remaining respondent on the basis of a settlement agreement. Accordingly, the Commission has determined to terminate the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.21(b)(2) of the Commission's Rules of Practice and Procedure, 19 CFR 210.21(b)(2).

Issued: May 29, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–12932 Filed 6–2–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on May 18, 2009, a proposed Consent Decree in *United States of America* v. *Georgia Pacific LLC,* Civil Action No. 1:09-cv-429, was lodged with the United States District Court for the Western District of Michigan.

In this action the United States sought to recover from Georgia Pacific environmental response costs in connection with a disposal area (known as ''OU2'') at the Allied Paper/Portage Creek/Kalamazoo River Superfund Site in Kalamazoo and Portage Counties, Michigan (the ''Site''). In addition, the United States sought a judgment declaring that the Defendant is liable for any further response costs that the

United States may incur as a result of releases or threatened releases of hazardous substances at OU2. The Consent Decree provides that Georgia Pacific shall, *inter alia,* (1) perform the remedy selected by the United States Environmental Protection Agency (''EPA'') for OU2; and (2) pay all of EPA's costs of overseeing the work as well as $225,509.91 towards EPA's past costs.

The U.S. 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 e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, the comments should refer to *United States of America* v.*Georgia Pacific LLC,* Civil Action No. 1:09-cv-429, D.J. Ref. 90–11–2–07912.

During the comment period, the Consent Decree may be examined at the Office of the United States Attorney, Western District of Michigan, 5th Floor, The Law Building, 330 Iona Ave., Grand Rapids, MI 49503, and at the offices of the U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604. The Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree 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 $44.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–12871 Filed 6–2–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 001–2009]

Privacy Act of 1974; System of Records

AGENCY: Criminal Division, Department of Justice.

ACTION: Notice of a modification of a system of records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Criminal Division (CRM), Department of Justice, proposes to modify an existing system of records entitled ''Organized Crime Drug Enforcement Task Force Fusion Center System,'' JUSTICE/CRM–028, which covers the records maintained by the Organized Crime Drug Enforcement Task Force (OCDETF) Fusion Center, Executive Office for the Organized Crime Drug Enforcement Task Force, Criminal Division, and rename it the ''Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center System.'' In recognition of the demonstrated interrelationship between criminal organizations that engage in illicit drug trafficking (and related criminal activities) and those that engage in international organized crime, involving a broader variety of criminal activity, the International Organized Crime Intelligence and Operations Center (IOC–2) and OCDETF formed a partnership. This partnership will facilitate both OCDETF and IOC–2 mission needs by collocating multi-source criminal law enforcement and intelligence data into one central system in order to assist OCDETF and IOC–2 in executing their responsibilities with respect to drug trafficking, international organized crime, money laundering, firearms trafficking, alien smuggling, terrorism, and other enforcement efforts, including the identification, location, arrest and prosecution of suspects, and civil proceedings and other activities related to such enforcement activities. Additionally, two new routine use disclosures are being added to the system notice. Routine use (t) pertains to the suitability/eligibility of an individual for a license or permit and routine use (u) includes notification of a terrorist threat.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by July 13, 2009.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments to the Department of Justice, ATTN: Robin Moss, Privacy Analyst, Office of Privacy and Civil Liberties, Department of Justice, National Place Building, 1331 Pennsylvania Avenue NW., Suite 940, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Director, Executive Office for the Organized Crime Drug Enforcement Task Force, Criminal Division, U.S. Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530–0001.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the modified system of records.

Dated: May 28, 2009.

Kirsten J. Moncada,

Acting Chief Privacy and Civil Liberties Officer.

JUSTICE/CRM–028

SYSTEM NAME:

Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center System.

SECURITY CLASSIFICATION:

Classified, sensitive.

SYSTEM LOCATION:

U.S. Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Individuals charged with, convicted of, or known, suspected, or alleged to be involved with, illicit narcotic trafficking or other potentially related criminal activity, including but not limited to facilitating the transportation of narcotics proceeds, money laundering, firearms trafficking, alien smuggling, and terrorist activity, or involved with international organized crime. For these purposes international organized crime refers to those self-perpetuating associations of individuals who operate internationally for the purpose of obtaining power, influence, monetary and/or commercial gains, wholly or in part by illegal means, while protecting their activities through a pattern of corruption and/or violence, or while protecting their illegal activities through an international organizational structure and the exploitation of international commerce or communication mechanisms. 2. Individuals with pertinent knowledge of some circumstances or aspect of a case

or record subject, such as witnesses, associates of record subjects, informants, and law enforcement or intelligence personnel. 3. Individuals, reasonably suspected of engaging in money laundering, other financial crimes, terrorism, and other criminal activity, including individuals referenced in information provided to the Financial Crimes Enforcement Network from financial institutions and other sources. 4. Individuals identified in or involved with the filing, evaluation, or investigation of reports under the Bank Secrecy Act and its implementing regulations. 5. Information about relevant immigrant and nonimmigrant visa applicants, including visa adjudication, issuance, and refusal information is also collected.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may contain investigative and intelligence information about the individuals in this system, including their identifying information such as, but not limited to, name, social security number, address, physical descriptions of appearance, license plate information, bank account number, location and activities, as well as other data which may assist the Organized Crime Drug Enforcement Task Force (OCDETF) Fusion Center in fulfilling its responsibilities and/or the International Organized Crime Intelligence and Operations Center (IOC–2) in fulfilling its responsibilities. Information includes multi-source data that may assist law enforcement agencies, regulatory agencies, and agencies of the U.S. foreign intelligence community or military community in executing their responsibilities with respect to drug trafficking, international organized crime, money laundering, firearms trafficking, alien smuggling, terrorism, and other enforcement efforts, including the identification, location, arrest and prosecution of suspects, and civil proceedings and other activities related to such enforcement activities. This system of records will not contain Federal tax returns and return information as defined by 26 U.S.C. 6103.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Consolidated Appropriations Act, 2004, Public Law 108–199, 118 Stat. 3 (2004); Comprehensive Drug Abuse Prevention and Control Act of 1970, Public Law 91–513 (84 Stat. 1236); the Single Convention on Narcotic Drugs, 1961; the Organized Crime Control Act of 1970, Public Law 91–452 (84 Stat. 922); the Convention on Transnational Organized Crime, 2004; Executive Order 11396 (1968). Additional authority is derived from Treaties, Statutes, Executive Orders and Presidential Proclamations which the Department of Justice (DOJ) has been charged with administering.

PURPOSE(S):

This system of records will serve two primary purposes. The first purpose of this system of records is to facilitate the mission of the OCDETF Program, which is to reduce the drug supply by identifying, disrupting and dismantling the most significant international and domestic drug supply and money laundering organizations and related criminal operations (e.g., arms traffickers, alien smugglers, terrorists). By establishing a central data warehouse for the compilation, fusion, storage, and comprehensive analysis of drug, financial, and related investigative information, OCDETF expects to produce a more complete picture of the activities of drug trafficking, money laundering, firearms trafficking, alien smuggling, terrorist, and other criminal organizations and their memberships than any one such agency can produce by itself. Specifically, the OCDETF Fusion Center will develop investigative leads, operational intelligence products and strategic intelligence assessments on new or evolving threats. The OCDETF Fusion Center intends to disseminate these analytical products, as appropriate, to Federal, state, local, tribal, territorial, and foreign law enforcement and regulatory agencies and to agencies of the U.S. foreign intelligence community and the military community, to assist them in enforcing criminal, civil, and regulatory laws related to drug trafficking, money laundering, firearms trafficking, alien smuggling, terrorism, and other crimes, including the identification, apprehension, and prosecution of individuals who threaten the United States national and international security and interests through their involvement in such crimes.

The second purpose of this system of records is to facilitate the mission of IOC–2 and its member agencies to significantly disrupt and dismantle those international criminal organizations posing the greatest threat to the United States. By establishing a central data warehouse for the compilation, fusion, storage, and comprehensive analysis of international organized crime, financial, and related investigative information, IOC–2 expects to produce a more complete picture of the activities of international criminal organizations and their memberships than any one such agency can produce by itself. Specifically, IOC–2 will develop investigative leads, operational intelligence products and strategic intelligence assessments on new or evolving threats. IOC–2 intends to disseminate these analytical products, as appropriate, to Federal, state, local, tribal, territorial, and foreign law enforcement and regulatory agencies and to agencies of the U.S. foreign intelligence community and the military community, to assist them in enforcing criminal, civil, and regulatory laws related to organized crime, terrorism, and other crimes, including the identification, apprehension, and prosecution of individuals who threaten the United States national and international security and interests through their involvement in such crimes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

(a) To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, local, territorial, tribal, or foreign) where the information is relevant to the recipient entity's law enforcement responsibilities.

(b) To a governmental entity lawfully engaged in collecting law enforcement, law enforcement intelligence, or national security intelligence information for such purposes.

(c) To any person or entity if deemed by the Department of Justice to be necessary in order to elicit information or cooperation from the recipient for use by the Department in the performance of an authorized law enforcement activity related to this system.

(d) To the Department of State and components thereof to further the efforts of those agencies with respect to the national security and foreign affairs aspects of international drug trafficking, money laundering, firearms trafficking, alien smuggling, terrorism, and related crimes.

(e) To the Department of Defense and components thereof to support its role in the detection and monitoring of the transportation of illegal drugs and money laundering in the United States or such other roles in support of counter-drug and money laundering law enforcement, counter-firearms trafficking, counter-alien smuggling, and related crimes as may be permitted by law.

(f) To the United Nations and its employees to the extent that the information is relevant to the recipient's

law enforcement or international security functions.

(g) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

(h) To the White House (the President, Vice-President, their staffs, and other entities of the Executive Office of the President), and, during Presidential transitions, to the President Elect and Vice-President Elect and for their designated transition team staff, for coordination of activities that relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President, President Elect, Vice-President or Vice-President Elect.

(i) To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

(j) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(k) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings.

(l) To appropriate officials and employees of a Federal agency or entity that requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract, or the issuance of a grant or benefit.

(m) To designated officers and employees of state, local, territorial, or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision.

(n) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records.

(o) To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(p) To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

(q) To the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(r) To a former employee of the Department for purposes of: responding to an official inquiry by a Federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(s) To appropriate agencies, entities, and persons when (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(t) To Federal, state, local, territorial, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

(u) To any person, organization, or governmental entity in order to notify them of a serious terrorist threat for the purpose of guarding against or responding to such a treat.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized records are stored on hard disk or removable storage devices. Some information, including investigative files and information incorporated into analytical products, may be retained in hard copy format and stored in individual file folders and file cabinets with controlled access, and/or other appropriate GSA-approved security containers.

RETRIEVABILITY:

Access to individual records is gained by use of data retrieval capabilities of computer software acquired and developed for processing of information in the OCDETF Fusion Center and IOC–2 System. Data will be retrieved through a number of criteria, including personal identifying information such as name and social security number.

SAFEGUARDS:

These records are housed in a secure building restricted to DOJ employees and other authorized personnel, and those persons transacting business with the DOJ who are escorted by DOJ or other authorized personnel. Physical and electronic access to the System is safeguarded in accordance with DOJ rules and policies governing automated systems security and access, including the maintenance of technical equipment in restricted areas. The selection of containers or facilities is made in consideration of the sensitivity or National Security Classification as appropriate, of the files. The System is contained in a room secured by intruder alarms and other appropriate physical and electronic security controls. Access to the System terminal(s) are further restricted to DOJ employees, detailees to DOJ from other government agencies, and individual contractors who have authorized access (including individual passwords and identification codes), appropriate security clearances, and a demonstrated and lawful need to know the information in order to perform assigned functions on behalf of the OCDETF Fusion Center and/or IOC–2. All OCDETF Fusion Center and IOC–2 personnel capable of accessing the

OCDETF Fusion Center and IOC–2 System will have successfully passed a background investigation. Unauthorized access to the telecommunications terminals is precluded by a complex authentication procedure.

RETENTION AND DISPOSAL:

Records in this system are maintained and disposed of in accordance with appropriate authority of the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESS:

Director, Executive Office for the Organized Crime Drug Enforcement Task Force, Criminal Division, U.S. Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530–0001.

NOTIFICATION PROCEDURE:

Inquires should be addressed to: OCDETF Fusion Center Privacy Act/FOIA Unit, OCDETF Fusion Center, Executive Office for the Organized Crime Drug Enforcement Task Force, Criminal Division, U.S. Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530–0001.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing to the System Manager, with the envelope and the letter clearly marked ''Privacy Access Request.'' The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and dated and either notarized or submitted under penalty of perjury. Some information may be exempt from access provisions as described in the section entitled ''Exemptions Claimed for the System.'' An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their requests according to the Record Access Procedures listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information is not subject to amendment, such as tax return information. Some information may be exempt from contesting record procedures as described in the section entitled ''Exemptions Claimed for the System.'' An individual who is the subject of a record in this system may amend those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Information provided by Federal, state, local, tribal, territorial, and foreign law enforcement agencies; agencies of the U.S. foreign intelligence community and military community; and open sources, such as broadcast and print media and publicly-available data bases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H) and (I), (5), and (8); (f); and (g) of the Privacy Act. The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a (j) and/or (k). A determination as to exemption shall be made at the time a request for access or amendment is received. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and are published in today's **Federal Register**.

[FR Doc. E9–12860 Filed 6–2–09; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

May 28, 2009.

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 Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *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 Department of Labor—Bureau of Labor Statistics (BLS), 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: Bureau of Labor Statistics.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: BLS/OSHS Cooperative Agreement (Application Package).

OMB Control Number: 1220–0149.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 58.

Total Estimated Annual Burden Hours: 348.

Total Estimated Annual Costs Burden: $0.

Description: The Bureau of Labor Statistics (BLS) awards funds to agencies in 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam to assist them in operating at least one of the two Occupational Safety and Health Statistics (OSHS) cooperative statistical programs. The OSHS Cooperative Agreement (CA) is the vehicle through which State Grant Agencies are awarded these CA funds. The CA package includes application instructions and materials, as well as financial reporting, closeout and other administrative requirements, as spelled out in OMB Circular A–102, Grants and Cooperative Agreements with State and Local Governments, and its implementing

common rule in 2 CFR Part 215, and as published by the Department of Labor at 29 CFR Part 97. Federal Assistance is encouraged by Public Law 91–596, The Occupational Safety and Health Act. For additional information, see related notice published at Vol. 74 FR 12906 on March 25, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–12824 Filed 6–2–09; 8:45 am]

BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2009–0218]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Nuclear Material Events Database (NMED) for the Collection of Event Report, Response, Analyses, and Follow-up Data on Events Involving the Use of Atomic Energy Act (AEA) Radioactive Byproduct Material.

2. *Current OMB approval number:* 3150–0178.

3. *How often the collection is required:* Agreement States are requested to provide copies of licensee material event reports electronically or by hard copy to NRC on a monthly basis or within 30 days of receipt from their licensee. In addition, Agreement States are requested to report events that may pose a significant health and safety hazard to the NRC Headquarters Operations Officer within the next working day of notification by an Agreement State licensee.

4. *Who is required or asked to report:* Current Agreement States and any State receiving Agreement State status in the future.

5. *The number of annual respondents:* 35.

6. *The number of hours needed annually to complete the requirement or request:* 689 hours for all existing Agreement State reporting.

7. *Abstract:* NRC regulations require NRC licensees to report incidents and events involving the use, transportation and security of radioactive byproduct material, and source material, such as those involving radiation overexposures, leaking or contaminated sealed source(s), release of excessive contamination of radioactive material, lost or stolen radioactive material, equipment failures, abandoned well logging sources and medical events. Agreement State licenses are also required to report these events to their individual Agreement State regulatory authorities under compatible Agreement State regulations. NRC is requesting that the Agreement States provide information to NRC on the initial notification, response actions, and follow-up investigations on events involving the use (including suspected theft or terrorist activities) of nuclear materials regulated pursuant to the Atomic Energy Act. The event information should be provided in a uniform electronic format, for assessment and identification of any facilities/site specific or generic safety concerns that could have the potential to impact public health and safety. The identification and review of safety concerns may result in lessons learned, and may also identify generic issues for further study which could result in proposals for changes or revisions to technical or regulatory designs, processes, standards, guidance or requirements.

Submit, by August 3, 2009, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2009–0218. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2009–0218. Mail comments to Acting NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the Acting NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6445, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 26th day of May 2009.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–12887 Filed 6–2–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0506]

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 3.52, Revision 2.

FOR FURTHER INFORMATION CONTACT: Breeda Reilly, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 492–3110 or e-mail to *Breeda.Reilly@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific

parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 3.52, ''Standard Format and Content for the Health and Safety Sections of License Renewal Applications for Uranium Processing and Fuel Fabrication,'' was issued with a temporary identification as Draft Regulatory Guide, DG–3031. This guide directs the reader to the type of information acceptable to the NRC in its evaluation and verification of the safety basis for the licensing of special nuclear material (SNM). It references the application of NUREG–1520, ''Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility,'' issued March 2002, to the format and content of license renewal applications for fuel cycle facilities.

The regulatory framework that the NRC has established for procedures and criteria for the licensing of SNM is set forth in Title 10, Part 70, ''Domestic Licensing of Special Nuclear Material,'' of the *Code of Federal Regulations* (10 CFR part 70). In 10 CFR 70.73, ''Renewal of Licenses,'' the regulations specify that applications for license renewal (including licenses for enriched uranium processing, fuel fabrication, uranium enrichment, enriched uranium hexafluoride conversion, plutonium processing, fabrication of mixed-oxide fuel, and scrap recovery of SNM) must be filed in accordance with 10 CFR 2.109, ''Effect of Timely Renewal Application;'' 10 CFR 70.21, ''Filing;'' 10 CFR 70.22, ''Contents of Applications;'' 10 CFR 70.33, ''Renewal of Licenses;'' 10 CFR 70.38, ''Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas;'' and 10 CFR 70.65, ''Additional Content of Applications.''

II. Further Information

In September 2008, DG–3031 was published with a public comment period of 60 days from the issuance of the guide. The public comment period closed on November 10, 2008. The staff's responses to the comments received are located in NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML091050072. Electronic copies of Regulatory Guide 3.52, Revision 2 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 26th day of May, 2009.

For the Nuclear Regulatory Commission.

R.A. Jervey,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–12891 Filed 6–2–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY: Nuclear Regulatory Commission.

DATES: Weeks of June 1, 8, 15, 22, 29, July 6, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

Week of June 1, 2009

Wednesday, June 3, 2009

9:30 a.m.
Briefing on New Reactor Issues—Component Fabrication and Oversight—Part 1 (Public Meeting).

1:30 p.m.
Briefing on New Reactor Issues—Component Fabrication and Oversight—Part 2 (Public Meeting).
(*Contact for both parts:* Roger Rihm, 301–415–7807.)

Both parts of this meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, June 4, 2009

9:30 a.m.
Briefing on Digital Instrumentation and Control (Public Meeting). (*Contact:* Steve Arndt, 301–415–6502.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1:25 p.m.
Affirmation Session (Public Meeting) (Tentative).

a. Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station) Commonwealth of Massachusetts Petition for Review of LBP–08–22; Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station) Commonwealth of Massachusetts Petition for Review of LBP–08–25 (Tentative).
b. Entergy Nuclear Generation Co. and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station) (Tentative).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m.
Meeting with the Advisory Committee on Reactor Safeguards (Public Meeting) (Contact: Tanny Santos, 301–415–7270).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 8, 2009—Tentative

There are no meetings scheduled for the week of June 8, 2009.

Week of June 15, 2009—Tentative

There are no meetings scheduled for the week of June 15, 2009.

Week of June 22, 2009—Tentative

Thursday, June 25, 2009

1:30 p.m.
Meeting with Advisory Committee on the Medical Uses of Isotopes (Public Meeting). (*Contact:* Ashley Cockerham, 240–888–7129.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Friday, June 26, 2009

9:30 a.m.
Discussion of Security Issues (Closed—Ex. 3).

Week of June 29, 2009—Tentative

There are no meetings scheduled for the week of June 29, 2009.

Week of July 6, 2009—Tentative

There are no meetings scheduled for the week of July 6, 2009.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet

at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: May 28, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–13019 Filed 6–1–09; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0142]

State of New Jersey: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of New Jersey

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed Agreement with the State of New Jersey.

SUMMARY: By letter dated October 16, 2008, Governor Jon S. Corzine of New Jersey requested that the U. S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the State of New Jersey (State or New Jersey) as authorized by Section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would relinquish, and the State would assume, portions of the Commission's regulatory authority exercised within the State. As required by the Act, the NRC is publishing the proposed Agreement for public comment. The NRC is also publishing the summary of an assessment by the NRC staff of the State's regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the NRC staff assessment, the adequacy of the State's program, and the State's program staff, as discussed in this notice.

The proposed Agreement would exempt persons who possess or use certain radioactive materials in the State from portions of the Commission's regulatory authority. The Act requires that the NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR Part 150.

DATES: The comment period ends June 26, 2009. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the comment period ends.

ADDRESSES: Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rulemaking and Directives Branch, MS TWB–05–B01M, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Members of the public are invited and encouraged to submit comments electronically to *http://www.regulations.gov*. Search on Docket ID: [NRC–2009–0142] and follow the instructions for submitting comments.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at (800) 397–4209, or (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov*.

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O–1–F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of New Jersey including all information and documentation submitted in support of the request, and copies of the full text of the NRC Draft Staff Assessment are also available for public inspection in the NRC's Public Document Room-ADAMS Accession Numbers: ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, ML090770116, and ML091400097.

FOR FURTHER INFORMATION CONTACT: Torre Taylor, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–7900 or e-mail to *torre.taylor@nrc.gov*.

SUPPLEMENTARY INFORMATION: Since Section 274 of the Act was added in 1959, the Commission has entered into Agreements with 36 States. The Agreement States currently regulate approximately 19,000 Agreement material licenses, while the NRC regulates approximately 3,400 licenses. Under the proposed Agreement, approximately 500 NRC licenses will transfer to the State. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of that requirement.

I. Background

(a) Section 274b of the Act provides the mechanism for a State to assume regulatory authority from the NRC over certain radioactive materials and activities that involve use of the materials. The radioactive materials, sometimes referred to as ''Agreement materials,'' are: (a) Byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(2) of the Act; (c) byproduct materials as defined in Section 11e.(3) of the Act; (d) byproduct materials as defined in Section 11e.(4) of the Act; (e) source materials; and (f) special nuclear materials, restricted to quantities not sufficient to form a critical mass.

In a letter dated October 16, 2008, Governor Corzine certified that the State of New Jersey has a program for the control of radiation hazards that is adequate to protect public health and safety within New Jersey for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') that the State requests authority over are:

(1) The possession and use of byproduct materials as defined in section 11e.(1) of the Act;

(2) The possession and use of byproduct materials as defined in section 11e.(3) of the Act;

(3) The possession and use of byproduct materials as defined in section 11e.(4) of the Act;

(4) The possession and use of source materials;

(5) The possession and use of special nuclear materials in quantities not sufficient to form a critical mass; and

(6) The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons.

(b) The proposed Agreement contains articles that:

(i) Specify the materials and activities over which authority is transferred;

(ii) Specify the activities over which the Commission will retain regulatory authority;

(iii) Continue the authority of the Commission to safeguard nuclear materials and restricted data;

(iv) Commit the State and NRC to exchange information as necessary to maintain coordinated and compatible programs;

(v) Provide for the reciprocal recognition of licenses;

(vi) Provide for the suspension or termination of the Agreement; and

(vii) Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission and signed by the NRC Chairman and the Governor of New Jersey.

(c) The regulatory program is authorized by law under the New Jersey Statute N.J.S.A. 26:2D–1, the Radiation Protection Act, which provides the Governor with the authority to enter into an Agreement with the Commission. New Jersey law contains provisions for the orderly transfer of regulatory authority over affected licensees from the NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as State licenses until the licenses expire or are replaced by State-issued licenses.

The State currently regulates the users of naturally-occurring and accelerator-produced radioactive materials (NARM). The Energy Policy Act of 2005 (EPAct) expanded the Commission's regulatory authority over byproduct materials as defined in Sections 11e.(3) and 11e.(4) of the Act, to include certain naturally-occurring and accelerator-produced radioactive materials. On August 31, 2005, the Commission issued a time-limited waiver (70 FR 51581) of the EPAct requirements, which is effective through August 7, 2009. A plan to facilitate an orderly transition of regulatory authority with respect to byproduct material as defined in Sections 11e.(3) and 11e.(4) was noticed in the **Federal Register** on October 19, 2007 (72 FR 59158). Under the proposed Agreement, the State would assume regulatory authority for these radioactive materials. The State has proposed an effective date for the Agreement of no later than September 30, 2009. If the proposed Agreement is approved before August 7, 2009, the Commission would terminate the time-limited waiver in the State coincident with the effective date of the Agreement. However, if the Agreement is not approved prior to this date, NRC would have jurisdictional authority over all uses of byproduct material within the State. These licensees would have to meet NRC regulatory requirements and would have 6 months to apply for any necessary amendments to an NRC license they already possess, or 12 months to apply for a new NRC license, if needed.

With the effective date of the New Jersey Agreement having the potential to occur after the expiration of the time-limited waiver, staff is working to ensure an efficient transition of NARM licensees in New Jersey within the legal requirements. The staff's objective is to minimize the impact to NARM licensees in New Jersey during the transition to NRC and then back to New Jersey's regulatory authority, within a short time frame (*i.e.,* about 7 weeks).

(d) The NRC draft staff assessment finds that the New Jersey Department of Environmental Protection (NJDEP), Bureau of Environmental Radiation (BER), is adequate to protect public health and safety and is compatible with the NRC program for the regulation of Agreement materials.

II. Summary of the NRC Staff Assessment of the State's Program for the Control of Agreement Materials

The NRC staff has examined the State's request for an Agreement with respect to the ability of the radiation control program to regulate Agreement materials. The examination was based on the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States through Agreement,'' (46 FR 7540; January 23, 1981, as amended by Policy Statements published at 46 FR 36969; July 16, 1981 and at 48 FR 33376; July 21, 1983), and the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA–700, ''Processing an Agreement'' (available at *http://nrc-stp.ornl.gov/procedures/sa700.pdf* and *http://nrc-stp.ornl.gov/procedures/sa700_hb.pdf*).

(a) *Organization and Personnel.* The Agreement materials program will be located within the existing BER of the NJDEP. The BER will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the BER staff members are specified in the State's personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold a bachelor of science degree in physical or life sciences, with many staff holding a master of science degree in radiation science. All have had training and work experience in radiation protection. Supervisory level staff has at least 5 years of working experience in radiation protection, with most having greater than 10 years of experience.

The State performed an analysis of the expected workload under the proposed Agreement. Based on the NRC staff review of the State's staff analysis, the State has an adequate number of staff to regulate radioactive materials under the terms of the Agreement. The State will employ a staff with the equivalent of 13.25 full-time professional/technical and administrative employees for the Agreement materials program.

The State has indicated that the BER has an adequate number of trained and qualified staff in place. The State has developed qualification procedures for license reviewers and inspectors which are similar to the NRC's procedures. The technical staff is accompanying NRC staff on inspections of NRC licensees in New Jersey. BER staff is also actively supplementing their experience through direct meetings, discussions, and facility visits with NRC licensees in the State, and through self-study, in-house training, and formal training.

Overall, the NRC staff concluded that the BER technical staff identified by the State to participate in the Agreement materials program has sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the techniques of inspecting licensed users of Agreement materials.

(b) *Legislation and Regulations.* In conjunction with the rulemaking authority vested in the New Jersey Commission on Radiation Protection (N.J.S.A. 26:2D–7), the BER has the requisite authority to promulgate regulations for protection against radiation. The law provides BER the authority to issue licenses and orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors.

The NRC staff verified that the State adopted the relevant NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61, 70, 71, and 150 into New Jersey Administrative Code, Title 7, Chapter 28. The NRC staff also approved two license conditions to implement Increased Controls and Fingerprinting and Criminal History Records Check requirements for risk-significant radioactive materials for certain State licensees under the proposed Agreement. These license conditions will replace the Orders that NRC issued (EA–05–090 and EA–07–305) to these licensees that will transfer to the State. Therefore, on the proposed effective date of the Agreement, the State will have adopted an adequate and compatible set of radiation protection regulations that apply to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass. The NRC staff also verified that the State will not attempt to enforce regulatory matters reserved to the Commission.

(c) *Storage and Disposal.* The State has adopted NRC compatible requirements for the handling and storage of radioactive material. The State is requesting authority to regulate the land disposal of byproduct, source, and special nuclear waste materials received from other persons. The State waste disposal requirements cover the preparation, classification, and manifesting of radioactive waste generated by State licensees for transfer for disposal to an authorized waste disposal site or broker. The State has adopted the regulations for a land disposal site but does not expect to need to implement them in the near future since the State is a member of the Atlantic Compact and has access to the waste disposal site, EnergySolutions Barnwell Operations, located in Barnwell, South Carolina.

(d) *Transportation of Radioactive Material.* The State has adopted compatible regulations to the NRC regulations in 10 CFR Part 71. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. The State will not attempt to enforce portions of the regulations related to activities, such as approving packaging designs, which are reserved to NRC.

(e) *Recordkeeping and Incident Reporting.* The State has adopted compatible regulations to the sections of the NRC regulations which specify requirements for licensees to keep records, and to report incidents or accidents involving Agreement materials.

(f) *Evaluation of License Applications.* The State has adopted compatible regulations to the NRC regulations that specify the requirements a person must meet to get a license to possess or use radioactive materials. The State has also developed a licensing procedure manual, along with accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) *Inspections and Enforcement.* The State has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The BER has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. The State has also adopted procedures for the enforcement of regulatory requirements.

(h) *Regulatory Administration.* The State is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The State has also adopted administrative procedures to assure fair and impartial treatment of license applicants. State law prescribes standards of ethical conduct for State employees.

(i) *Cooperation with Other Agencies.* State laws provide for the recognition of existing NRC and Agreement State licenses. New Jersey has a process in place for the transition of active NRC licenses. Upon completion of the Agreement, all active NRC licenses issued to facilities in New Jersey will be recognized as NJDEP licenses. New Jersey will issue a brief licensing document that will include licensee specific information, as well as an expiration date, with a license condition that authorizes receipt, acquisition, possession, and transfer of byproduct, source, and/or special nuclear material; the authorized use(s); purposes; and the places of use as designated on the NRC license. The license condition will also commit the licensee to conduct its program in accordance with the NRC license and commitments. The NJDEP rules will govern unless the statements, representations and procedures in the licensee's application and correspondence are more restrictive than the NJDEP rules. NJDEP will then issue full NJDEP licenses, over approximately 13 months.

The State also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. New Jersey regulations, in N.J.A.C. 28:51.1, provide exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits the State to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of Agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and the State to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Section 274d of the Act provides that the Commission shall enter into an Agreement under Section 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the Agreement materials within the State, and that the State desires to assume regulatory responsibility for the Agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The NRC staff has reviewed the proposed Agreement, the certification by the State of New Jersey in the application for an Agreement submitted by Governor Corzine on October 16,

2008, and the supporting information provided by NJDEP, BER, and concludes that the State of New Jersey satisfies the criteria in the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' and meets the requirements of Section 274 of the Act.

Therefore, the proposed State of New Jersey program to regulate Agreement materials, as comprised of statutes, regulations, procedures, and staffing is compatible with the program of the Commission and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

Dated at Rockville, Maryland, this 27th day of May, 2009.

For the Nuclear Regulatory Commission.

Terrence Reis,

Deputy Director, National Materials Program Directorate, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.

Appendix A—An Agreement Between the United States Nuclear Regulatory Commission and the State of New Jersey for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.* (hereinafter referred to as the Act), to enter into Agreements with the Governor of any State/Commonwealth providing for discontinuance of the regulatory authority of the Commission within the State/Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), (2), (3), and (4) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the State of New Jersey is authorized under The Radiation Protection Act, N.J.S.A. 26:2D–1, to enter into this Agreement with the Commission; and,

Whereas, the Governor of the State of New Jersey certified on October 16, 2008, that the State of New Jersey (the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on [date] that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Act;

Now, therefore, It is hereby agreed between the Commission and the Governor of the State acting on behalf of the State as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

1. Byproduct materials as defined in Section 11e.(1) of the Act;
2. Byproduct materials as defined in Section 11e.(3) of the Act;
3. Byproduct materials as defined in Section 11e.(4) of the Act;
4. Source materials;
5. Special nuclear materials in quantities not sufficient to form a critical mass;
6. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;
4. The regulation of the disposal of such other byproduct, source, or special nuclear materials waste as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be disposed without a license from the Commission;
5. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;
6. The regulation of byproduct material as defined in Section 11e.(2) of the Act.

Article III

With the exception of those activities identified in Article II, paragraphs 1 through 4, this Agreement may be amended, upon application by the State and approval by the Commission, to include one or more of the additional activities specified in Article II, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the

Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible.

The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act.

The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article IX

This Agreement shall become effective on [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Rockville, Maryland this [date] day of [month], [year].

For the United States Nuclear Regulatory Commission.

Gregory B. Jaczko,

Chairman.

Done at Trenton, New Jersey this [date] day of [month], [year].

For the State of New Jersey.

Jon S. Corzine,

Governor.

[FR Doc. E9–12895 Filed 6–2–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0222]

Scoping Summary Report for the Update of the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (NUREG–1437)

On June 3, 2003 (68 FR 33209), the U.S. Nuclear Regulatory Commission (NRC) issued, for public comment, a Notice of Intent to prepare an Update of the *Generic Environmental Impact Statement for License Renewal of Nuclear Plants* (GEIS), NUREG–1437. In accordance with 10 CFR 51.26, the NRC conducted scoping meetings and collected comments from the public for the Update to the License Renewal GEIS, NUREG–1437. Subsequently, the Commission reopened scoping with a notice published in the **Federal Register** on October 3, 2005 (70 FR 57628) to encompass any additional comments since the original issuance of the Notice of Intent.

The NRC conducted a public scoping meeting in each of the four NRC regions for the License Renewal GEIS update. The public scoping meetings were held in Atlanta, Georgia; Chicago, Illinois; Anaheim, California; and Boston, Massachusetts. The NRC issued public scoping meeting summaries on August 12 and 13, 2003. The official transcripts from the public scoping meetings, written comments, and meeting summaries are available electronically for public inspection in the NRC Public Document Room (PDR) or from the NRC's Agencywide Documents Access and Management System (ADAMS) under package Accession Numbers ML032170942, ML032260339, ML032260715, and ML032170934. The scoping period for this update to the GEIS closed on September 17, 2003, but was subsequently reopened from October 3, 2005, to December 30, 2005. The NRC staff and its contractor reviewed the public scoping meeting transcripts and all written materials received during the public scoping periods and identified individual comments. All comments and suggestions received orally during the scoping meetings, or in writing, were considered.

The NRC staff prepared a Scoping Summary Report for the Update of the GEIS. This report summarizes comments received during the two public scoping periods and during four public scoping meetings. The environmental review process for license renewal of nuclear facilities continues under the current regulatory framework throughout the course of this effort.

In accordance with Title 10 of the Code of Federal Regulations Section 51.29(b), a copy of the Scoping Summary Report has been made publicly available at the PDR, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from ADAMS. The ADAMS Public Electronic Reading Room is accessible at *http://adamswebsearch.nrc.gov/dologin.htm.* The Accession Number for the Scoping Summary Report is ML082960910. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail at *pdr.resource@nrc.gov.*

For further information contact: Jennifer Davis, telephone 1–800–368–5462, extension 3835, or by e-mail at *LRGEISUpdate@nrc.gov,* Office of the Nuclear Reactor Regulation, Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 26th day of May 2009.

For the Nuclear Regulatory Commission.

David Wrona,

Chief, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E9–12894 Filed 6–2–09; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2009–25, CP2009–30, CP2009–31, CP2009–32, CP2009–33 and CP2009–34; Order No. 217]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Priority Mail Contract Group to the Competitive Product List. The Postal Service has also filed five related contracts. This notice addresses procedural steps associated with these filings.

DATES: Postal Service responses are due June 1, 2009. Comments are due June 8, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 19, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add a new product entitled Priority Mail Contract Group to the Competitive Product List.[1] The Postal Service asserts that Priority Mail Contract Group is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2009–25.

Contemporaneously with Docket No. MC2009–25 and pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5, the Postal Service filed five contracts which it identifies as Priority Mail Contract 6, Priority Mail Contract 7, Priority Mail Contract 8, Priority Mail Contract 9, and Priority Mail Contract 10. It believes these contracts are related to the proposed new product in Docket No. MC2009–25. These contracts have been assigned Docket Nos. CP2009–30 through CP2009–34.[2]

Classification request. The Request incorporates (1) A redacted version of the Governors' Decision authorizing the new product; (2) requested changes in the Mail Classification Schedule product list; (3) a statement of supporting justification as required by 39 CFR 3020.32; and (4) certification of compliance with 39 U.S.C. 3633(a).[3] Substantively, the Request seeks to add Priority Mail Contract Group to the Competitive Product List. *Id.* at 1–2.

In the Statement of Supporting Justification, Mary Prince Anderson, Manager, Sales and Communications, Expedited Shipping, asserts that the services to be provided will cover their attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.,* Attachment 2. Thus, Ms. Anderson contends there will be no issue of subsidization of competitive products by market dominant products as a result of this product. *Id.*

Related contracts. Redacted versions of five specific Priority Mail contracts are included with the Request. Three of the contracts are for 3 years, one of the contracts is for 1 year, and the final contract is for 3 months. Depending on the contract, the effective dates are proposed to be either the day on which the Commission provides all necessary regulatory approvals or the following day.[4] The Postal Service represents that all these contracts are consistent with 39 U.S.C. 3633(a). *See* Notices, Attachment B.

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Priority Mail contracts, under seal. In its Request, the Postal Service maintains that the contracts and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. Request at 2; Notices at 2.

II. Preliminary Observations

The Postal Service's filings in these cases differ from previous NSA cases in several ways. In the typical negotiated service agreement approval scenario, the Postal Service requests that the Commission list a new competitive negotiated service agreement-type product on the Competitive Product List. Contemporaneously, it typically requests approval of a particular contract or group of contracts under 39 U.S.C. 3633 that relate to the new negotiated service agreement competitive product. *See* Docket No. MC2009–9, Order Concerning Global Direct Contracts Negotiated Service Agreements, December 19, 2008; *see generally* Docket No. MC2009–9. If future or concurrent agreements are ''functionally equivalent'' to the initial proposed agreement, those contracts are typically listed as part of the prior negotiated service agreement product. *See e.g.,* Docket No. CP2009–19, Order Concerning Additional Global Expedited Package Services 1 Negotiated Service Agreement, January 9, 2009, at 4–6.

Here, the Postal Service is seeking to place a broadly defined negotiated service agreement-type product on the Competitive Product List which has very few requirements or limitations. The proposed requirements for that negotiated service agreement product are as follows: (1) The agreement must be for Priority Mail service, and (2) the cost coverage for the particular contract must fall within a specified range. Request, Attachment 1 and Attachment A.

The Postal Service provides no arguments or evidence attempting to show that the five contracts at issue in the above captioned ''CP'' cases are functionally equivalent. Additionally, the Commission is concerned that if functionally equivalent is intended to apply broadly, it may be problematic in many respects. *See generally* Docket No. C2008–3. In lieu of initiating separate ''MC'' dockets for each of the proposed contracts, the Commission will, for purposes of this notice, treat the filing on a consolidated basis and provide interested persons (including the Postal Service) an opportunity to address the proper classification of these contracts, *i.e.,* as separate products or functionally equivalent (in whole or in part).[5] Those commenting should provide the support for their position.

The broad parameters in the Governors' Decision appear designed to accommodate a variety of Priority Mail contracts. The Commission appreciates the underlying intent. Regardless of the

[1] Docket No. MC2009–25, Request of the United States Postal Service to Add Priority Mail Contract Group to Competitive Product List, May 19, 2009 (Request).

[2] Docket Nos. CP2009–30 through CP2009–34, Notice of Establishment of Rates and Class Not of General Applicability, May 19, 2009 (Notices).

[3] Attachment 1 to the Request consists of the redacted Decision of the Governors of the United States Postal Service on Establishment of Rates and Classes Not of General Applicability for Priority Mail Contract Group (Governors' Decision No. 09–6). The Governors' Decision includes two attachments. Attachment A shows the requested changes to the Mail Classification Schedule product list. Attachment B provides an analysis of the proposed Priority Mail Contract Group. Attachment 2 provides a statement of supporting justification for this Request. Attachment 3 provides the certification of compliance with 39 U.S.C. 3633(a).

[4] The contracts in Docket Nos. CP2009–30, CP2009–31 and CP2009–34 become effective on the day the Commission issues all necessary regulatory approvals. The contracts in Docket Nos. CP2009–32 and CP2009–33 become effective the day after the Commission issues all necessary regulatory approvals.

[5] In the alternative, the Commission construes the Postal Service's Request as a proposal to add five separate products to the Competitive Product List.

outcome of this proceeding, it is the Commission's view that Governors' Decision 09–6 may be used to authorize future Priority Mail agreements that satisfy the broad parameters set out in Governors' Decision 09–6. Thus, for example, if, based on the parameters of Governors' Decision 09–6, the Postal Service seeks to add a future non-functionally equivalent Priority Mail contract to the Competitive Product List, it may file a new joint ''MC'' and ''CP'' docket that relies on Governors' Decision 09–6 to satisfy the requirements of 39 CFR 3020.31(b) and 39 U.S.C. 3642.

III. Supplemental Information

Pursuant to 39 CFR 3015.6, the Commission requests the Postal Service to provide the following supplemental information by June 1, 2009:

1. Please explain the cost adjustments present within each contract. Explain what mailer activities or characteristics result in the cost savings, or result in any additional costs for the Postal Service. Please address every instance where an NSA partner's cost differs from the average cost.

2. Please provide a timeframe of when NSA partner volumes and cubic feet measurements were collected for each contract. Also provide a unit of analysis for volumes in each contract, *e.g.,* whole numbers, thousands, etc.

3. In the Excel files accompanying all five contracts, unit transportation costs are hard coded (*See* tab: ''Partner Unit Cost'' rows 21 and 22). Please provide up-to-date sources and show all calculations.

IV. Notice of Filings

The Commission establishes Docket No. MC2009–25 for consideration of the Postal Service's classification request and Docket Nos. CP2009–30 through CP2009–34 for consideration of the five proposed contracts. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this order.

Filing instructions. For administrative convenience, future filings addressing the issues raised in this notice and order should be filed in Docket No. MC2009–25. However, if interested parties identify issues relating only to one of the contracts at issue in Docket No. CP2009–30 through CP2009–34, such filings should be made in the specific docket in which those issues pertain.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR part 3020, subpart B. Additionally, the Commission welcomes comments on the issues discussed above. Comments are due no later than June 8, 2009. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Michael J. Ravnitzky to serve as Public Representative in these dockets.

V. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket No. MC2009–25 for consideration of the issues raised in this order. The Commission establishes Docket Nos. CP2009–30, CP2009–31, CP2009–32, CP2009–33 and CP2009–34 to address specific issues raised by those individual contracts.

2. Future filings addressing the issues raised in this notice and order should be filed in Docket No. MC2009–25. However, if interested parties identify issues relating only to one of the contracts at issue in Docket Nos. CP2009–30 through CP2009–34, such filings should be made in the specific docket in which those issues pertain.

3. Pursuant to 39 U.S.C. 505, Michael J. Ravnitzky is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Postal Service is to provide the information requested in section III of this order no later than June 1, 2009.

5. Comments by interested persons in these proceedings are due no later than June 8, 2009.

6. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E9–12839 Filed 6–2–09; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

Board Votes To Close June 2, 2009, Meeting

At its closed session meeting on May 5, 2009, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting to be held on June 2, 2009, in Washington, DC via teleconference. The Board determined that no earlier public notice was possible.

Items Considered

1. Strategic Issues.

2. Financial Matters.

3. Pricing.

4. Personnel Matters and Compensation Issues.

5. Governors' Executive Session—discussion of prior agenda items and Board Governance.

General Counsel Certification

The General Counsel of the United States Postal Service has certified that the meeting is properly closed under the Government in the Sunshine Act.

Contact Person for More Information

Requests for information about the meeting should be addressed to the Secretary of the Board, Julie S. Moore, at (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. E9–13065 Filed 6–1–09; 4:15 pm]

BILLING CODE 7710–12–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

Board Votes to Close May 22, 2009, Meeting

In person and by telephone vote on May 22, 2009, a majority of the members contacted and voting, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting held in Washington, DC, via teleconference. The Board determined that no earlier public notice was possible.

Items Considered

1. Strategic Issues.

2. Financial Matters.

3. Pricing.

4. Personnel Matters and Compensation Issues.

5. Governors' Executive Session—discussion of prior agenda items and Board Governance.

General Counsel Certification

The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

Contact Person for More Information

Requests for information about the meeting should be addressed to the

Secretary of the Board, Julie S. Moore, at (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. E9–13063 Filed 6–1–09; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28748; File No. 812–13551]

The Managers Funds, et al.; Notice of Application

May 28, 2009.

AGENCY: Securities and Exchange Commission (''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), 17(a)(2) 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: The Managers Funds, Managers AMG Funds, Managers Trust I, and Managers Trust II (each, a ''Trust,'' and collectively, the ''Trusts''), and Managers Investment Group LLC (''Managers'').

Filing Dates: The application was filed on July 24, 2008, and amended on January 22, 2009, May 11, 2009, and May 27, 2009.

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 June 22, 2009 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, 800 Connecticut Avenue, Norwalk, CT 06854–2325.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Attorney Adviser, at (202) 551–6826, or, Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Trust is organized as a Massachusetts business trust and is registered under the Act as an open-end management investment company.[1] Each Trust consists of one or more series (''Funds''). Managers, a Delaware limited liability company and an independently managed subsidiary of Affiliated Managers Group, Inc., is registered as an investment adviser under the Investment Advisers Act of 1940, and serves as the investment adviser to, and administrator of, each Fund.[2]

2. At any particular time, while some Funds invest their cash balances in money market funds or purchase other short-term instruments, other Funds may need to rely on custodian overdrafts for temporary purposes to satisfy redemption requests, 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.

3. If a Fund were to incur an overdraft with the custodian bank, the Fund would pay interest on the loan at a rate that is significantly higher than the rate that is earned by other (non-borrowing) Funds on investments in money market funds, or if applicable, other short term instruments of the same maturity as the overdraft loan. Applicants state that this differential represents the profit earned by the lender by way of overdrafts and is not attributable to any material difference in the credit quality or risk of such transactions.

4. Applicants request an order that would permit the Trusts to enter into master interfund lending agreements (''Interfund Lending Agreements'') with each other on behalf of the Funds that would permit each Fund to lend money directly to and borrow directly from other Funds through a credit facility for temporary purposes (''Interfund Loan''). Applicants state that the proposed credit facility would substantially reduce the Funds' potential borrowing costs and enhance the ability of the lending Funds to earn higher rates of interest on their short-term lendings. Although the proposed credit facility would substantially reduce the Funds' need to borrow through custodian overdrafts, the Funds would be free to establish committed lines of credit or other borrowing arrangements with unaffiliated banks.

5. Applicants anticipate that the proposed credit facility would provide a borrowing Fund with significant savings at times when the cash position of the borrowing Fund is insufficient to meet temporary cash requirements. This situation could arise when shareholder redemptions exceed anticipated volumes and certain Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). However, redemption requests normally are effected immediately. The proposed credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose that a Fund could use the proposed credit facility when a sale of securities ''fails'' due to circumstances beyond the Fund's control, such as a delay in the delivery of cash to the Fund's custodian bank or improper delivery instructions by the broker effecting the transaction. ''Sales fails'' may present a cash shortfall if the Fund has undertaken to purchase a security using the proceeds from securities sold. Alternatively, the Fund could either ''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

[1] Applicants request that the order also apply to any existing or future registered management investment company advised by Managers, or any entity controlling, controlled by, or under common control with Managers, that is in the same ''group of investment companies'' as the Trusts, as defined in section 12(d)(1)(G)(ii) of the Act (included in the term ''Trusts'').

[2] Applicants request that the order also apply to any successor entity to Managers. The term ''successor entity'' is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.''

same-day settlement basis, earning a lower return on the investment. Use of the proposed credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without the Fund incurring custodian overdraft or other charges.

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 that would be payable under short-term loans offered by banks. 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 or purchasing shares of a money market Fund. Thus, the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate to be charged to the Funds on any Interfund Loan (the ''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate,'' both as defined below. The Repo Rate for any day would be the highest or best (after giving effect to factors such as the credit quality of the issuer) rate available to a lending Fund from investment in overnight repurchase agreements. The Bank Loan Rate for any day would be calculated by Managers each day an Interfund Loan is made according to a formula established by each Trust's board of trustees (''Trustees'') 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 200 basis points) and would vary with this rate so as to reflect changing bank loan rates. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Trust's Trustees. Each Trust's Trustees would periodically review the continuing appropriateness of using the formula 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 it would subject to the approval of each Trust's Trustees.

9. The proposed credit facility would be administered by Managers's fund administration department (the ''Credit Facility Team''), and no portfolio manager for any Fund would serve on the Credit Facility Team. Under the proposed credit facility, the portfolio managers for each participating Fund could provide standing instructions to participate daily as a borrower or lender. The Credit Facility Team on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds. Once it determined the aggregate amount of cash available for loans and borrowing demand, the Credit Facility Team would allocate loans among borrowing Funds without any further communication from the portfolio managers of the Funds. After the allocating cash for Interfund Loans, the Credit Facility Team would invest any remaining cash in accordance with the standing instructions of the portfolio managers or such remaining amounts will be invested directly by the portfolio managers of the Funds.

10. The Credit Facility Team would allocate borrowing demand and cash available for lending among the Funds on what the Credit Facility Team believes to be an equitable basis, subject to certain administrative procedures 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 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 Trust's Trustees, including a majority of Trustees who are not ''interested persons'' of the Trust, as that term is defined in Section 2(a)(19) of the Act (''Independent Trustees''), to ensure that both borrowing and lending Funds participate on an equitable basis.

11. Managers, through the Credit Facility Team, would administer the proposed credit facility as a disinterested fiduciary as part of its duties under the relevant management, advisory or administrative contract with each Fund and would receive no additional fee as compensation for its services in connection with the administration of the proposed credit facility. Managers would: (i) Monitor the Interfund Loan Rate and the other terms and conditions of the loans; (ii) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations; (iii) ensure equitable treatment of each Fund; and (iv) make quarterly reports to the Trustees concerning any transactions by the Funds under the proposed credit facility and the Interfund Loan Rate charged.

12. No Fund may participate in the proposed credit facility unless: (i) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (ii) the Fund has fully disclosed all material information concerning the credit facility in its prospectus and/or statement of additional information; and (iii) the Fund's participation in the credit facility is consistent with its investment objectives, limitations and organizational documents.

13. 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), 17(a)(2) 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) of the Act generally prohibits any registered management company from lending money or other property to any person, directly or indirectly, if that person controls or is under common control with that 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, such other person. Section 2(a)(9) of the Act defines ''control'' as the ''power to exercise a controlling influence over the management or policies of a company,'' but excludes circumstances in which ''such power is solely the result of an official position with such company.'' Applicants state that the Funds could be deemed to be under common control by virtue of having Managers as their common investment adviser and/or by reason of having common officers and Trustees.

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 the provisions of section 17(a) of the Act 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 assert that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants assert that sections 17(a)(3) and 21(b) were intended to prevent a person 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 person 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) Managers, through the Credit Facility Team, would administer the program as a disinterested fiduciary; (b) all Interfund Loans would consist only of uninvested cash reserves that a Fund otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through a money market fund; (c) the Interfund Loans would not involve a significantly 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 through custodian overdrafts and avoid the up-front commitment fees generally 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 any affiliated person of a registered investment company, or any affiliated person of such a person, from selling securities or other property to the investment company. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, from purchasing securities or other property from the investment 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.

5. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Applicants also state that any pledge of assets in connection with an Interfund Loan could be construed as a purchase of those assets from the borrowing Fund, and therefore a purchase of the borrowing Fund's securities or other property for the purposes of section 17(a)(2) of the Act. 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 that 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. Applicants also state that the requested relief from section 17(a)(2) of the Act meets the standards of section 6(c) and 17(b) because any collateral pledged to secure an Interfund Loan would be subject to the same conditions imposed by any other lender to a Fund that imposes conditions on the quality of or access to collateral for a borrowing (if the other lender is another Fund) or the same or better conditions (in any other circumstance).

6. 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 assert 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 to the Funds' shareholders and that Managers will receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all of the participating Funds.

7. Section 18(f)(1) of the Act prohibits registered open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, if 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'' generally 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).

8. Applicants assert that granting relief under section 6(c) of the Act is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) of the Act that all borrowings of a Fund, including combined Interfund Loans and bank borrowings, have at least 300 per centum asset coverage. Based on the conditions and safeguards described in the application, applicants also assert 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) of the Act.

9. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or any affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction 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.

10. Applicants assert 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 of the Commission 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 Credit Facility Team 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: (i) More favorable to the lending Fund than the Repo Rate and, if applicable, the yield of any money market fund in which the lending Fund could otherwise invest; and (ii) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund: (i) Will be at an interest rate equal to or lower than any outstanding bank loan; (ii) 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; (iii) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days); and (iv) 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 exceed the limits imposed by section 18 of the Act.

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: (i) Repay all its outstanding Interfund Loans; (ii) reduce its outstanding indebtedness to 10% or less of its total assets; or (iii) 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 exceed 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. A 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 for the preceding seven calendar days or 102% of the Fund's 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 Credit Facility Team 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 portfolio manager of the Funds. The Credit Facility Team will not solicit cash for the proposed credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. The Credit Facility Team will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions of the portfolio managers or such remaining amounts will be invested directly by the portfolio managers of the Funds.

13. Managers will monitor the Interfund Loan Rate and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Trustees of each Trust 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. The Trustees of each Trust, including a majority of the Independent Trustees, will: (i) 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; (ii) 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 (iii) 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, Managers will promptly refer such loan for arbitration to an independent arbitrator selected by the Trustees of each Fund 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,

[3] If the dispute involves Funds with different Trustees, the respective Trustees of each Fund will select an independent arbitrator that is satisfactory to each Fund.

at least annually, a written report to the Trustees 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, the yield of any money market fund in which the lending Fund could otherwise invest, and such other information presented to the Fund's Trustees in connection with the review required by conditions 13 and 14.

17. Managers will prepare and submit to the Trustees 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, Managers will report on the operations of the proposed credit facility at the Trustees' quarterly meetings.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates Managers' assertion that it has established procedures reasonably designed to achieve compliance with the terms and conditions of the order. The report will 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: (i) That the Interfund Loan Rate will be higher than the Repo Rate, and, if applicable, the yield of the money market funds, but lower than the Bank Loan Rate; (ii) compliance with the collateral requirements as set forth in the Application; (iii) compliance with the percentage limitations on interfund borrowing and lending; (iv) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Trustees; and (v) that the Interfund Loan Rate 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 examination 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 statement of additional information all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12917 Filed 6–2–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, June 4, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Chairman Schapiro, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Thursday, June 4, 2009 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Consideration of amicus participation; and

Other matters related to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: May 29, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–12914 Filed 6–2–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59995; File No. SR–Phlx–2009–32]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, Relating to the Exchange's Enhanced Electronic Trading Platform for Options, Phlx XL II

May 28, 2009.

I. Introduction

On April 3, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' 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 implement several enhancements to its electronic options trading system, Phlx XL, the enhanced system being called Phlx XL II. The proposed rule change was published for comment in the **Federal Register** on April 14, 2009.[3] On April 15, 2009, Phlx filed with the Commission, pursuant to Section 19(b)(1) of the Act [4] and Rule 19b–4 thereunder,[5] Amendment No. 1 to the proposed rule change. Amendment No. 1 to the proposed rule change was published for comment in the **Federal Register** on April 23, 2009.[6] The Commission received two comment letters on the proposed rule change and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59721 (April 7, 2009), 74 FR 17245 (April 14, 2009) (''Notice'').

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] *See* Securities Exchange Act Release No. 59779 (April 16, 2009), 74 FR 18600 (April 23, 2009) (''Amendment Notice'').

one comment response letter from Phlx.[7] On May 20, 2009, the Exchange submitted Amendment No. 2 to the proposed rule change.[8] On May 28, 2009, the Exchange submitted Amendment No. 3 to the proposed rule change.[9] This order grants accelerated approval to the proposed rule change, as modified by Amendment Nos. 1, 2, and 3.

II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 to the Proposed Rule Change

The Exchange proposes to implement several enhancements to its electronic options trading system, Phlx XL.[10] The enhanced system would be known as Phlx XL II and would reflect enhancements to the opening, linkage and routing, quoting, and order management processes.[11] These enhancements are intended to improve execution quality for Phlx users by improving a number of processes, including those related to the opening, order handling and order execution.

According to Phlx, the changes to the opening process are intended to provide better executions to users, more consistent prices on executions and a smoother transition from the opening to the regular trading day. The changes to the order handling process are intended improve routing to liquidity available at other exchanges while preventing non-exempt trade-throughs of other markets, and provide users with increased flexibility and control in how their orders are handled. The Exchange expects that order processing should be more consistent, with greater continuity in prices as a result of these changes, because several of the changes are intended to introduce a price check to limit executions at far away prices. The Exchange believes that these changes should benefit investors and users through better and more consistent system behavior and resulting prices. A brief summary of these modifications and enhancements is outlined below.[12]

New Opening Process [13]

Phlx proposes to introduce opening process enhancements under Phlx XL II that would, in general, operate as described below.

If there are no opening quotes or orders that lock or cross each other, the system would open by disseminating the Exchange's best bid and offer among quotes and orders that exist in the Phlx XL II system at that time. If there are opening quotes or orders that lock or cross each other, the Phlx XL II system would take the lowest bid and the highest offer among quotations received to determine the lowest quote bid and highest quote offer and would then determine the price at which the maximum number of contracts can trade. If that price is within the lowest quote bid and highest quote offer and leaves no imbalance, Phlx would open at that price.[14]

If such opening price includes interest other than solely Phlx interest, the system would initiate a ''Route Timer,'' [15] not to exceed one second. If no new interest is received during the Route Timer, the Phlx XL II system would route to other markets disseminating prices better than Phlx's opening price, execute marketable interest at the opening price on Phlx, and route to other markets disseminating prices equal to the Phlx opening price if necessary. Orders would be routed as Immediate or Cancel (''IOC'') orders with a limit price equal to the Exchange's opening price. If interest is received during the Route Timer, the Phlx XL II system would recalculate the opening price taking such new interest into account. Then, if there is no imbalance, the system would execute marketable interest at the opening price on the Phlx and route the remainder to other markets.

Where there is an imbalance at the price at which the maximum number of contracts can trade that is also at or within the lowest quote bid and highest quote offer, the Phlx XL II system would calculate an Opening Quote Range (''OQR'') for a particular series.[16] If there is sufficient size on the Exchange and on away markets on the opposite side of the market from the imbalance to execute all opening marketable interest at a price that is at or within the established OQR and the Away Best Bid/Offer (''ABBO'') without leaving an imbalance, the Phlx XL II system would open the affected series for trading at that price by executing opening marketable interest on the Phlx XL II system, as long as the system does not trade through the ABBO.[17] If it would trade through the ABBO, the Phlx XL II system would initiate a Route Timer, not to exceed one second. If no new interest is received during the Route Timer, the Phlx XL II system would then route to other markets disseminating prices better than Phlx's opening price, execute marketable interest at the opening price on Phlx and, route to other markets disseminating prices equal to the Phlx opening price if necessary. If all opening marketable size cannot be completely executed at or within the OQR without trading through the ABBO, the Phlx XL II system would automatically institute an imbalance process.[18] During the imbalance process Phlx XL II may submit additional opening quotes, opening sweeps and orders. Phlx XL II would then determine if the imbalance amount can then trade on the Exchange at or within the OQR. If it cannot, the Exchange would seek to route remaining interest away after initiating a Route Timer.

If the imbalance process does not satisfy the number of marketable contracts on the Exchange, the Phlx XL II system would repeat the Imbalance Process up to three times (as established by the Exchange). If after that number of times, the Phlx XL II system still cannot route and/or trade the entire imbalance amount, the Phlx XL II system would conduct a Provisional Opening by routing to other markets at prices better

[7] *See* Letters from Janet M. Kissane, Senior Vice President—Legal and Corporate Secretary, Office of the General Counsel, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated May 14, 2009 (''NYSE Euronext Letter''); Angelo Evangelou, Assistant General Counsel, Chicago Board Options Exchange, Incorporated (''CBOE''), to Elizabeth M. Murphy, Secretary, Commission, dated May 20, 2009 (''CBOE Letter''); and Richard S. Rudolph, Assistant General Counsel, Phlx, to Elizabeth M. Murphy, Secretary, Commission, dated May 28, 2009 (''Response Letter'').

[8] In Amendment No. 2, the Exchange updated the proposed rule text contained in Exhibit 5 to reflect changes that were approved as part of SR–Phlx–2009–23. *See* Securities Exchange Act Release No. 59924 (May 14, 2009), 74 FR 23759 (May 20, 2009). Because Amendment No. 2 is technical in nature, the Commission is not publishing it for comment.

[9] The text of Amendment No. 3 is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[10] The following description incorporates changes proposed by Phlx in Amendment Nos. 1, 2, and 3. *See* text accompanying notes 90–96, *infra,* for a discussion of the changes proposed in Amendment No. 3.

[11] The Exchange acknowledges that the proposed Options Order Protection and Locked/Crossed Market Plan may necessitate modifications to its proposed rules. *See* Securities Exchange Act Release No. 59647 (March 30, 2009), 74 FR 15010 (April 2, 2009).

[12] For a more detailed description of the proposed rule change, *see* Notice and Amendment No. 3, *supra,* notes 3 and 9.

[13] For a more detailed description of the proposed opening process, *see* Notice at 17245–49 and Amendment No. 3.

[14] *See* proposed Rule 1017(l)(ii).

[15] *See* proposed Rule 1017(l)(ii)(C)–(D). All references to a ''Route Timer'' in the Phlx XL II system and in the proposed rules mean a system pause for a brief period. Phlx XL II participants would not receive any notification that a Route Timer has been initiated.

[16] *See* proposed Rule 1017(l)(iii).

[17] If the ABBO is crossed, it would not be taken into consideration by the system and the system would immediately execute.

[18] *See* proposed Rule 1017(l)(iv).

than the Exchange opening price for their disseminated size, trading available contracts on the Exchange at the Exchange opening price, and routing contracts to other markets at prices equal to the Phlx opening price at their disseminated size.[19]

The opening process would then be complete. Unexecuted Opening Sweeps[20] would be cancelled. Any unexecuted contracts from the imbalance not traded or routed would be displayed in the Exchange quote at the opening price for the remaining size for a period not to exceed ten seconds and subsequently cancelled back to the entering participant if they remain unexecuted and priced through the opening price. During this display time period, the Phlx XL II system would disseminate, if the imbalance is a buy imbalance, an offer that is $200,000, with a size of one or, if the imbalance is a sell imbalance, a bid that is $0.00, with a size of one, on the opposite side of the market from remaining unexecuted contracts.

Amendments to the Exchange's Firm Quote Rule

The Exchange also proposes to amend its Rule 1082, Firm Quotations, to enhance the ability for Phlx XL II participants to refresh, and potentially improve, their quotations when their option quotation size is exhausted at a particular price level, and that would reflect the Exchange's ability to refresh its disseminated market following the exhaustion of the Exchange's disseminated size.[21] The Exchange has proposed two functionalities to accomplish this goal: Quote Exhaust and Market Exhaust.

Quote Exhaust[22]

Quote Exhaust occurs when the Exchange's disseminated market at a particular price level includes a quote, and such market is exhausted by an inbound contra-side quote or order (''initiating quote or order''), and following such exhaustion, contracts remain to be executed from the initiating quote or order.[23] Rather than immediately executing at the next available price, the Phlx XL II would employ a timer not to exceed one second in order to allow market participants to refresh their quotes. During the Quote Exhaust Timer, the Exchange would disseminate the reference price for the remaining size, provided that such price does not lock an away market, in which case, the Exchange would disseminate a bid and offer that is one Minimum Price Variation (''MPV'') from the away market price, and if the remaining size is a buyer, an offer that is $200,000, with a size of one or, if the remaining size is a seller, a bid that is $0.00, with a size of one, on the opposite side of the market from remaining unexecuted contracts. If the remaining contracts in the initiating quote or order are either traded or cancelled during the Quote Exhaust Timer, the Quote Exhaust Timer would terminate and normal trading would resume.

If the Exchange receives an order, quote or sweep on the opposite side of the market from the initiating quote or order during the Quote Exhaust Timer that locks or crosses the reference price at any time during the Quote Exhaust Timer, it would execute immediately against the initiating quote or order at the reference price.[24] If the initiating quote or order that caused the Quote Exhaust is exhausted, the Quote Exhaust Timer would be terminated. With respect to any order, quote or sweep received on the opposite side of the market from the initiating quote or order during the Quote Exhaust Timer that is inferior to the reference price, the system would place any non-IOC order onto the book. Such new interest would be included in the first PBBO calculation and available to be traded immediately following the end of the Quote Exhaust Timer. All non-marketable sweeps and IOC orders would be cancelled immediately if not executed and would not participate in the Quote Exhaust process.

If the Exchange receives an order, quote or sweep on the same side of the market as the initiating quote or order during the Quote Exhaust Timer, the Phlx XL II system would cancel any sweep or IOC order.[25] If such new quote or order, other than an IOC order, is a market or marketable limit order or marketable quote (*i.e.,* priced at or through the reference price) the Phlx XL II system would display it at the reference price, with a disseminated size that is the sum of such order and/or quote plus the remaining contracts in the initiating order or quote. According to Phlx, the purpose of this provision is to enhance liquidity on the Exchange by adding all available liquidity received during the Quote Exhaust Timer to the PBBO at the reference price.

If there are still unexecuted contracts remaining in the initiating quote or order or any new interest on the same side of the market, the Phlx XL II system would calculate a new PBBO.[26] The Phlx XL II system would conduct an Acceptable Range price ''test'' to determine whether there is a valid next available price at which the Phlx XL II system may execute the remaining unexecuted contracts.[27]

The Phlx XL II system then conducts a Quote Exhaust Resolution,[28] determining whether to trade at the next available Phlx price by comparing it to the Acceptable Range price and the ABBO price to establish a Best Price. The Phlx XL II system then considers whether the price of the initiating quote or order locks or crosses the Best Price, which, in turn, determines whether the initiating quote or order trades, is routed or is posted.[29]

Initiating Quote or Order Locks the Best Price

If the initiating quote or order locks the Best Price, the system would execute, route if a routable order, and/or post the initiating quote or order as follows:

If the Best Price is the next Phlx price, the system would execute a trade up to

[19] *See* proposed Rule 1017(l)(iv)(C)(7).

[20] ''Opening Sweeps'' are one-sided electronic quotations submitted for execution against opening trading interest in the Phlx XL II system. *See* proposed Rule 1017(l)(v). Opening Sweeps may be entered at any price with a minimum price variation applicable to the affected series, on either side of the market, at single or multiple price level(s), and may be cancelled and re-entered. *See* proposed Rule 1017(l)(v)(B). In addition to the Opening Sweep, the Phlx would also introduce other new sweep capabilities. For a more detailed discussion of the proposed sweeps, *see* Notice at 17257 and Amendment No. 3.

[21] *See* proposed Rule 1066(c)(8), which clarifies the definition of an Immediate-or-Cancel (''IOC'') order as a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed shall be cancelled. IOC orders are not routable and would not be subject to any routing process or timer described in the Exchange's rules. If not executed immediately, an IOC order would be cancelled by the Phlx XL II system. Contracts remaining in an IOC order following a partial execution would be cancelled. The Exchange represents that IOC orders would not be subject to any Route Timer and would not be included in the Quote Exhaust and Market Exhaust processes.

[22] For a more detailed description of the proposed Quote Exhaust feature, *see* Notice at 17249–52 and Amendment No. 3.

[23] *See* proposed Rule 1082(a)(ii)(B)(3). The initial execution price is known as the ''reference price.''

[24] *See* proposed Rule 1082(a)(ii)(B)(3)(c).

[25] *See* proposed Rule 1082(a)(ii)(B)(3)(d).

[26] *See* proposed Rule 1082(a)(ii)(B)(3)(e).

[27] *See* proposed Rule 1082(a)(ii)(B)(3)(f). The Acceptable Range for the next available price would be calculated by the Phlx XL II system by taking the reference price, plus or minus a value to be determined by the Exchange (*i.e.,* the reference price – (x) for sell orders and the reference price + (x) for buy orders).

[28] *See* proposed Rule 1082(a)(ii)(B)(3)(g).

[29] For further details regarding the Quote Exhaust Resolution, including how the Phlx XL II system would determine whether to route, trade and/or post interest, *see* Notice at 17250 and Amendment No. 3.

its disseminated size. If this Best Price (next Phlx price) is equal to the ABBO price, any remaining unexecuted routable order volume from the execution on the Phlx would be routed away. After such routing, any remaining unexecuted contracts would be posted on the Exchange at the ABBO price. If this Best Price (next Phlx price) is equal to the Acceptable Range price, any remaining unexecuted routable order volume from the execution on the Phlx would be posted on the Exchange at the Acceptable Range price. Lastly, if this Best Price (next Phlx price) is equivalent to both the ABBO and the Acceptable Range price, any remainder order volume from the execution on the Phlx would be routed away, and if after routing there still remains open contracts, the remainder would be posted on the Phlx at the Acceptable Range price.

If the Best Price is the ABBO, where the ABBO is not equal to the next Phlx price, the initiating order would be routed away up to the size of the ABBO and, after routing, any remaining unexecuted contracts from the initiating order would be posted on the Exchange at the ABBO price. If the Best Price (ABBO is not equal to the next Phlx price) equals the Acceptable Range price, the initiating order would be routed away and after such routing, any remaining unexecuted contracts would be posted on the Exchange at the ABBO price.

If the Best Price is the Acceptable Range Price, where the Acceptable Range Price is not equal to either the next Phlx price or the ABBO, the initiating order or quote would be posted at the Acceptable Range Price.

Initial Quote or Order Crosses Best Price

If the initiating quote or order crosses the Best Price, the Phlx XL II system would execute, route, and/or post the initiating quote or order as described below:

If the Best Price is the next Phlx price, the Phlx XL II system would execute a trade at the Exchange's next available price up to the Exchange's disseminated size. If this Best Price (next Phlx price) is equal to the ABBO price, any remaining order volume from the execution on the Exchange would be routed away and, after such routing, any remainder volume would be posted on the Exchange at the ABBO price. If this Best Price (next Phlx price) is equal to the Acceptable Range price, any remaining volume from the execution on the Phlx would be posted at the Acceptable Range Price or if locking or crossing the away market price, one minimum variation from the away market price for the remaining size for a period not to exceed ten seconds and cancelled after this time has elapsed. During this period, the Phlx XL system would disseminate if the remaining size is a buyer, an offer that is $200,000, with a size of one or, if the remaining size is a seller, a bid that is $0.00, with a size of one, on the opposite side of the market from remaining unexecuted contracts.

Lastly, if this Best Price (next Phlx price) is equal to both the ABBO and the Acceptable Range price, any remainder order volume from the execution on the Phlx would be routed away, and if after routing there still remain unexecuted contracts, the remainder would be posted on the Phlx at the Acceptable Range price for a period not to exceed ten seconds, and cancelled after this time has elapsed. During this period, the Phlx XL system would disseminate if the remaining size is a buyer, an offer that is $200,000, with a size of one or, if the remaining size is a seller, a bid that is $0.00, with a size of one, on the opposite side of the market from remaining unexecuted contracts.

If the Best Price is the ABBO, where the ABBO is not equal to the next Phlx price, the initiating order would be routed away and if after routing there remain unexecuted contracts, the remainder of the initiating order would be posted on the Phlx at the ABBO price. If this Best Price (ABBO is not equal to the next Phlx price) equals the Acceptable Range price, the initiating order would be routed away and if after routing there remain unexecuted contracts, the remainder of the order would be posted on the Phlx at the ABBO price for a period not to exceed ten seconds, and cancelled after this time has elapsed. During this period, the Phlx XL II system would disseminate if the remaining size is a buyer, an offer that is $200,000, with a size of one or, if the remaining size is a seller, a bid that is $0.00, with a size of one, on the opposite side of the market from remaining unexecuted contracts.

If the Best Price is the Acceptable Range price, where the Acceptable Range price is not equal to either the next Phlx price or the ABBO, the initiating quote or order would be posted on the Exchange at the Acceptable Range price for a period not to exceed ten seconds, and cancelled after this time has elapsed. During this period, the Phlx XL II system would disseminate if the remaining size is a buyer, an offer that is $200,000, with a size of one or, if the remaining size is a seller, a bid that is $0.00, with a size of one, on the opposite side of the market from remaining unexecuted contracts.

If the initiating order is non-routable, when the order would otherwise route according to the process described above, the order would be posted on the Phlx at a price one minimum trading increment inferior to the Best Price so as not to lock an away market.[30]

Exchange Generate Quote

If the Exchange's disseminated size in a particular series is exhausted at that particular price level, and no specialist, SQT or RSQT has revised their quotation immediately following the exhaustion of the Exchange's disseminated size at such price level, in Phlx XL II, the Exchange would disseminate a bid of $0.00 and an offer of $200,000, each for a size of one contract.[31]

Market Exhaust[32]

Market Exhaust occurs when there are no Phlx XL II participant quotations in the Exchange's disseminated market for a particular series and an initiating order in the series is received. In such a circumstance, the Phlx XL II system, using Market Exhaust, would initiate a Market Exhaust Auction for the initiating order.[33] When an initiating order is received when there are no quotations in the Exchange market, the Phlx XL II system would determine if the PBBO on the opposite side of the market from the initiating order is represented by an order on the Phlx order book which is priced equal to or better than the ABBO on that same side of the market.

If that Phlx market represented by an order on the Phlx order book is the NBBO, then the initiating order would immediately trade with the order at the PBBO price. If there are still unexecuted contracts remaining in the initiating order, the XL II system would initiate a Quote Exhaust Timer. The price at which the initiating order traded becomes the reference price. During the Quote Exhaust Timer, the Exchange would disseminate the reference price for the remaining size, provided that such price does not lock an away market, in which case, the Exchange would disseminate a bid and offer that is one Minimum Price Variation

[30] *See* proposed Rule 1082(a)(ii)(B)(3)(g)(v).

[31] *See* proposed Rule 1082(a)(ii)(B)(4)(a). The Exchange represents that it would, as it does today, surveil for compliance on the part of specialists (and SQTs and RSQTs) with the Exchange's continuous quoting requirements. *See* Exchange Rule 1014(b)(ii)(D).

[32] For a more detailed discussion of the terms of the proposed Market Exhaust, *see* the Notice at 17252–55 and Amendment No. 3.

[33] *See* proposed Rule 1082(a)(ii)(B)(4).

(''MPV'') from the away market price, and if the remaining size is a buyer, an offer that is $200,000, with a size of one or, if the remaining size is a seller, a bid that is $0.00, with a size of one, on the opposite side of the market from remaining unexecuted contracts.

If that Phlx market is not at the NBBO, then the Phlx XL II system would immediately broadcast a notification (an ''Auction Notification'') to Phlx XL II participants; the purpose of the auction is to seek participation and determine the best price at which the contracts in the initiating order may be executed (the ''Auction Price''). The Auction Notification would include the series, size and side of the market of the initiating order. The Auction Notification would not include a price. The Auction would be for a period of time not to exceed three seconds (the ''Auction Period'').

During the Auction Period, Phlx XL II participants may submit bids and offers in response to the Auction Notification into the system until the end of the Auction Period.[34] Such responsive bids and offers may be submitted to the system via (1) a two-sided quote; (2) a single-sided, single-priced quotation for the auction to be known as ''Auction Sweep'' that would be effective only for the Auction Period and cancelled at the end of that period if not executed,[35] and (3) limit orders. IOC Orders would be cancelled immediately if not executed and would not participate in the Market Exhaust process. In addition, incoming orders from non-Phlx XL II participants and existing orders on the book would be eligible to participate at the end of the Auction Period, together with responses to the Auction Notification.

If at the end of the Auction Period, there are no valid-width auction quotes[36] in the Exchange market, the initiating order, plus all other Auction Sweeps and orders received during the Auction Period would be cancelled.[37] Quotes that are not valid-width auction quotes would remain and a new PBBO would be calculated and disseminated. If at the end of the Auction Period there are valid-width auction quotes, the Phlx XL II system would determine the allowable executable price range from the lowest valid-width auction quote bid and the highest valid-width auction quote ask; this is the Auction Quote Range (''AQR'').

If the initiating order can be completely executed at or within the AQR and the ABBO, using contracts available from all available quotes, Auction Sweeps or orders priced at or within the AQR, a trade would be executed at the Exchange at the Auction Price.

If quotes, Auction Sweeps and orders submitted during the Auction Period would not allow the entire initiating order to trade at a price within the AQR without trading through the ABBO, the Phlx XL II system would determine if the total number of contracts displayed at the ABBO price on away markets would satisfy the number of marketable contracts available on the Exchange. If it does, the Phlx XL II system would route a number of contracts that would satisfy interest at other markets at the ABBO price, and determine a PBBO that reflects the remaining Phlx interest without locking the away market. In this situation, the Phlx XL II system would price any contracts routed to other markets at the ABBO price.

If the total number of contracts priced at the ABBO would not satisfy the number of marketable contracts the Exchange has, the Phlx XL II system would determine how many contracts it has available on the Exchange at a price equal to the ABBO. If the total number of ABBO contracts plus the number of contracts available on the Exchange at the ABBO price would satisfy the number of marketable contracts the Exchange has, the ABBO price becomes the Exchange Auction Price and the Phlx XL II system would trade available contracts on the Exchange at the Exchange Auction Price and contemporaneously route a number of contracts that would satisfy interest at other markets at prices better than the Exchange Auction Price. In this situation, the Phlx XL II system would price any contracts routed to other markets at the away market price. The Exchange Auction Price would always be at or within the AQR.

If the total number of ABBO contracts plus the number of contracts available on the Exchange at the ABBO price would not satisfy the number of marketable contracts the Exchange has, the Phlx XL II system would determine how many contracts are available on the Exchange at a price that is one MPV through the ABBO price. If the total number of ABBO contracts plus the number of contracts available on the Exchange at the ABBO price plus the number of contracts available on the Exchange at a price that is one MPV through the ABBO price would satisfy the number of marketable contracts the Exchange has, the price that is one MPV through the ABBO becomes the Exchange Auction Price. The system would contemporaneously route a number of contracts that would satisfy interest at the ABBO and trade a number of contracts that would satisfy interest on the Exchange at the Exchange Auction Price.[38] In this situation, the Phlx XL II system would price any contracts routed to other markets at the Exchange Auction Price.

If the total number of ABBO contracts plus the number of contracts available on the Exchange at the ABBO price plus the number of contracts available on the Exchange at a price that is one MPV through the ABBO price would not satisfy the number of marketable contracts the Exchange has, the system may repeat the auction process up to three times.

If after that number of times, the Phlx XL II system still cannot either route and/or trade the entire initiating order, the Phlx XL II system would conduct a Provisional Auction by routing to markets at the ABBO for their disseminated size, and trading as many contracts as possible on the Exchange at the ABBO price and at a price that is one MPV through the ABBO price. In this situation, the Phlx XL II system would price any contracts routed to other markets at the ABBO price.

The Auction would then be complete. Any unexecuted contracts from the initiating order would be displayed in the Exchange quote at the Auction Price for the remaining size for a brief period not to exceed ten seconds and subsequently cancelled back to the entering participant if they remain unexecuted and priced through the Auction Price. During the brief period, the Phlx XL II system would disseminate if the remaining size is a buyer, an offer that is $200,000, with a size of one or, if the remaining size is a seller, a bid that is $0.00, with a size of one, on the opposite side of the market from remaining unexecuted contracts.

In sum, the Exchange states that the automated auction process logic seeks to first route away all contracts executable

[34] *See* proposed Rule 1082(a)(ii)(B)(4)(c).

[35] *See* proposed Rule 1082(a)(ii)(B)(4)(c)(i). The Auction Sweep may be entered only during the auction process and would remain in effect only until the auction is completed. A single Phlx XL II participant may enter multiple Auction Sweeps, with each Auction Sweep at a different price level. If a Phlx XL II participant submits multiple Auction Sweeps, the Phlx XL II system would consider only the most recent Auction Sweep at each price level submitted by such Phlx XL II participant in determining the Auction Price. The Phlx XL II system would aggregate the size of all Auction Sweeps (*i.e.,* for all Phlx XL II participants) at a particular price level for trade allocation purposes.

[36] A valid-width auction quote is a quote that has a bid/ask differential that complies with the parameters set forth in a table developed by the Exchange which would be published in an Options Trader Alert and posted on the Exchange's website.

[37] *See* proposed Rule 1082(a)(ii)(B)(4)(d).

[38] The Phlx XL II system would route contracts to the ABBO when the next Phlx price is greater than one MPV through the ABBO.

at a better price than the Exchange's Auction Price, then executes all contracts available on the Exchange at the Auction Price or one MPV through the NBBO and, lastly, routes away all contracts available at other exchanges at the Exchange's Auction Price.

The foregoing processes occur contemporaneously.

Expanded Order Types [39]

The Exchange has proposed three new order types: Do-Not-Route (''DNR'') order, a FIND order, and a SRCH order.

DNR Orders

A DNR order may execute on the Exchange at a price equal to or better than, but not inferior to, the best away market price but, if that best away market remains, the DNR order would remain in the Phlx book and be displayed at a price one minimum price variation inferior to that away best bid/offer.[40] A DNR order would never be routed outside of Phlx regardless of the prices displayed by away markets. Any incoming order interacting with such a resting DNR order would receive the best away market price. Should the best away market change its price, or move to an inferior price level, the DNR order would automatically re-price from its one minimum price variation inferior to the original away best bid/offer price to one minimum trading increment away from the new away best bid/offer price or its original limit price. Once priced at its original limit price, it would remain at that price until executed or cancelled. Should the best away market improve its price such that it locks or crosses the DNR order limit price, the Exchange would execute the resulting incoming order that is routed from the away market that locked or crossed the DNR order limit price.

FIND Orders

A FIND order is an order that would be routable upon receipt, or any time the option goes through an opening process.[41] A FIND order on the Phlx XL II book during an opening would be routed as part of the Opening Process. Once the Opening Process is complete, the FIND order would either be eligible to trade at the Phlx price or placed on the Phlx book either at its limit price or at a price that is one MPV from the ABBO price if it would otherwise lock or cross the ABBO. A FIND order would not be eligible for routing until the next time the option series is subject to a new Opening Process. A FIND order received during open trading that is not marketable against the PBBO or the ABBO would be entered into the Phlx XL II book at its limit price. The FIND order would not be eligible for routing until the next time the option series is subject to a new Opening Process.

A FIND order received during open trading that would be marketable against the PBBO when the ABBO is inferior to the PBBO would be traded at the Exchange at the PBBO price. If the FIND order has size remaining after exhausting the PBBO, it may (1) trade at the next PBBO price (or prices) if the order price is locking or crossing that price (or prices) up to and including the ABBO price, or (2) be entered into the Phlx XL II book at its limit price, or entered into the Phlx XL II book at one MPV away from the ABBO if locking or crossing the ABBO. The FIND order would not be eligible for routing until the next time the option series is subject to a new Opening Process.

A FIND order received during open trading that is marketable against the PBBO when the ABBO is equal to the PBBO would be traded at the Exchange at the PBBO. If the FIND order has size remaining after exhausting the PBBO, it would initiate a Route Timer not to exceed one second in order to allow Phlx XL II participants and other market participants an opportunity to interact with the remainder of the FIND order. During the Route Timer, the FIND order would be included in the PBBO at a price one MPV away from the ABBO. If, during the Route Timer, any new interest arrives opposite the FIND order that is equal to or better than the ABBO price, the FIND order would trade against such new interest at the ABBO price. What happens to a FIND order after the Route Timer expires depends on the ABBO price at that time.[42]

A FIND order received during open trading that is marketable against the ABBO when the ABBO is better than the PBBO would initiate a Route Timer not to exceed one second in order to allow Phlx XL II participants and other market participants an opportunity to interact with the FIND order. During the Route Timer, the FIND order would be included in the PBBO at a price one MPV away from the ABBO. If, during the Route Timer, any new interest arrives opposite the FIND order that is equal to or better than the ABBO price, the FIND order would trade against such new interest at the ABBO price. What happens to a FIND order after the Route Timer expires depends on the ABBO price at that time.[43]

SRCH Orders

A SRCH order is an order that would be routable at any time.[44] A SRCH order on the Phlx XL II book during an opening, whether it is received prior to the opening or it is a GTC SRCH order from a prior day, would be routed as part of the Opening Process. Once the Opening Process is complete, a SRCH order would be eligible either to: (1) Trade at the Phlx price, if that price is equal to or better than the ABBO or, if the ABBO is better than the Phlx price, orders have been routed to the ABBO markets for their full size; or (2) be routed to the ABBO if the ABBO price is the best price, and/or (3) be placed on the Phlx XL II book at its limit price if not participating in the Phlx opening at the opening price and not locking or crossing the ABBO. Once on the book, the SRCH order would be eligible for routing if it is locked or crossed by an away market.

A SRCH order received during open trading that is not marketable against the PBBO or the ABBO would be entered into the Phlx XL II book. Once on the book, the SRCH order is eligible for routing if it is locked or crossed by an away market. A SRCH order received during open trading that is marketable against the PBBO when the ABBO is inferior to the PBBO would be traded at the Exchange at the PBBO price. If the SRCH order has size remaining after exhausting the PBBO, it may (1) trade at the next PBBO price (or prices) if the order price is locking or crossing that price (or prices) up to and including the price equal to the ABBO price, and/or (2) be routed, subject to a Route Timer not to exceed one second, to the ABBO markets if all Phlx interest at better or equal prices has been exhausted, and/or (3) be entered into the Phlx XL II book at its limit price if not locking or crossing the Phlx price or the ABBO. Once on the book, the SRCH order would be eligible for routing if it is locked or crossed by an away market.

A SRCH order received during open trading that is marketable against the PBBO when the ABBO is equal to the PBBO would be traded at the Exchange at the PBBO. If the SRCH order has size remaining after exhausting the PBBO, it would initiate a Route Timer not to exceed one second in order to allow

[39] For a more detailed discussion of the proposed new order types, *see* Notice at 17255–57 and Amendment No. 3.

[40] *See* proposed Rule 1080(m)(iv)(A).

[41] *See* proposed Rule 1080(m)(iv)(B).

[42] *See id*. For further details regarding FIND orders, including what happens to a FIND order after the Route Timer expires in the situation described above, *see* Notice at 17256 and Amendment No. 3.

[43] *See id*. For further details regarding FIND orders, including what happens to a FIND order after the Route Time expires in the situation described above, *see* Notice at 17256 and Amendment No. 3.

[44] *See* proposed Rule 1080(m)(v)(C).

Phlx XL II participants and other market participants an opportunity to interact with the SRCH order. During the Route Timer, the SRCH order would be included in the PBBO at a price one MPV away from the ABBO. If, during the Route Timer, any new interest arrives opposite the SRCH order that is equal to or better than the ABBO price, the SRCH order would trade against such new interest at the ABBO price. What happens to a SRCH order after the Route Timer expires depends on the ABBO price at that time.[45]

A SRCH order received during open trading that is marketable against the ABBO when the ABBO is better than the PBBO would initiate a Route Timer not to exceed one second in order to allow Phlx XL II participants and other market participants an opportunity to interact with the remainder of the SRCH order. During the Route Timer, the SRCH order would be included in the PBBO at a price one MPV inferior to the ABBO. If, during the Route Timer, any new interest arrives opposite the SRCH order that is equal to or better than the ABBO price, the SRCH order would trade against such new interest at the ABBO price. What happens to a SRCH order after the Route Timer expires depends on the ABBO price at that time.[46]

A SRCH order on the Phlx XL II book may be routed to an away market if it is locked or crossed by an away market. If an ABBO locks or crosses the PBBO which includes a SRCH order, the Phlx XL II system would initiate a Route Timer not to exceed one second in order to allow Phlx users an opportunity to interact with the SRCH order. During the Route Timer, the SRCH order would remain in the PBBO at its posted price. If, during the Route Timer, any new interest arrives opposite the SRCH order that is equal to or better than the ABBO price, the SRCH order would trade against such new interest at the ABBO price. What happens to a SRCH order after the Route Timer expires depends on the ABBO price at that time.[47]

Order Routing[48]

The Phlx XL II system would route only customer FIND and SRCH orders with no other contingencies. Customer FIND and SRCH orders would first be checked by the Phlx XL II system for available contracts for potential execution, then orders are sent to other available market centers for potential execution. When checking the book, the Phlx XL II system would seek to execute at the price at which it would send the order to a destination market center. In situations where the Exchange's disseminated bid or offer is one MPV inferior to the NBBO price, the Phlx XL II system would contemporaneously route to the away market(s) disseminating the NBBO at such away market's size, and execute remaining contracts at the Exchange's disseminated bid or offer up to its disseminated size. If contracts remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the Phlx XL II system would not route the order to the locking or crossing market center, except as specified.

Orders sent to other markets do not retain time priority with respect to other orders in the Phlx XL II system and the Phlx XL II system would continue to execute other orders while routed orders are away at another market center. Once routed by the Phlx XL II system, an order becomes subject to the rules and procedures of the destination market including, but not limited to, order cancellation. If a routed order is subsequently returned, in whole or in part, that order, or its remainder, would receive a new time stamp reflecting the time of its return to the Phlx XL II system.[49] Entering member organizations whose orders are routed to away markets would be obligated to honor such trades that are executed on away markets to the same extent they would be obligated to honor a trade executed on the Exchange.[50]

In addition, the Exchange proposes to establish Nasdaq Options Services LLC (''NOS'') as the Exchange's exclusive order router.[51] NOS will serve as the routing facility of the Exchange (''Routing Facility''), and the sole use of NOS by the Exchange[52] will be to route orders in options listed and open for trading on the Phlx XL II system to away market centers pursuant to Exchange rules.[53] Also, NOS will be a member of an SRO unaffiliated with Phlx that is its designated examining authority.[54]

The use of NOS to route orders to other market centers would be optional. Parties that do not desire to use NOS must designate orders as not available for routing.[55] The Exchange would establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and the Routing Facility, and any other entity, including any affiliate of the Routing Facility, and, if the Routing Facility or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of the Routing Facility or affiliate that provides the other business activities and the routing services.[56] In addition, the books, records, premises, officers, directors, agents, and employees of the Routing Facility, as a facility of the Exchange, would be deemed to be the books, records, premises, officers, directors, agents, and employees of the Exchange, for purposes of and subject to oversight pursuant to the Act, and such books and records of the Routing Facility would be subject at all times to inspection and copying by the Exchange and the Commission.[57]

Exchange Rule 985(b) generally prohibits the Phlx or an entity with which it is affiliated from acquiring or maintaining an ownership interest in, or engaging in a business venture with a Phlx member or an affiliate of a Phlx member in the absence of an effective filing with the Commission under Section 19(b) of the Act. NOS is a member of Phlx, and also an indirect, wholly owned subsidiary of Phlx's parent company, and therefore an affiliate of Phlx. In July 2008, the Commission approved NOS as an affiliate of Phlx for the limited purpose of providing routing services for NASDAQ Exchange for orders that first

[45] *See id.* For further details regarding SRCH orders, including what happens to a SRCH order after the Route Timer expires in the situation described above, *see* Notice at 17257 and Amendment No. 3.

[46] *See id.* For further details regarding SRCH orders, including what happens to a SRCH order after the Route Timer expires in the situation described above, *see* Notice at 17257 and Amendment No. 3.

[47] *See id.* For further details regarding SRCH orders, including what happens to a SRCH order after the Route Timer expires in the situation described above, *see* Notice at 17257 and Amendment No. 3.

[48] For a more detailed discussion of the terms of the proposed routing functions, *see* Notice at 17255 and Amendment No. 3.

[49] *See* proposed Rule 1080(m)(i).

[50] *See* proposed Rule 1080(m)(ii).

[51] *See* proposed Rule 1080(m)(iii)(A).

[52] The Commission notes that if NOS were to perform any other functions for Phlx, Phlx would have to file a proposed rule change with the Commission pursuant to Section 19 of the Act and the rules and regulations thereunder.

[53] *See* Rule 1080(m)(iii)(A). The Commission notes that because the routing services provided by NOS will be pursuant to Exchange rules, they will be available only to Exchange members. Further, the Commission notes that the two order types that would be available for routing—FIND and SRCH—would both first check the Phlx XL II system for available liquidity before routing to other market centers.

[54] *See id.*

[55] *See* proposed Rule 1080(m)(iii)(B).

[56] *See* proposed Rule 1080(m)(iii)(C).

[57] *See* 1080(m)(iii)(D).

attempt to access liquidity on NASDAQ Exchange's systems before routing to Phlx, and subject to certain conditions.[58] The Exchange now requests that the Commission provide a further exemption from the restrictions on affiliation by allowing Phlx to use NOS to provide routing services for orders that first attempt to access liquidity on the Phlx's systems before routing to other exchanges.

Miscellaneous Rule Changes

The Exchange proposes to make various additional changes and updates to delete obsolete provisions and generally update the relevant rules. [59]

Pilot

In the situations described above where the Exchange proposes to disseminate quotations on one side of the market with a price of $0.00 or $200,000 and a size of one contract, the relevant rule provisions would be subject to a pilot period scheduled to end on November 30, 2009.

Rollout and Deployment

The Exchange expects to roll out the Phlx XL II system over a period of 12 weeks following Commission approval of this proposal (the ''rollout period''), beginning with one single option traded on the Phlx XL II system, while other options traded on the Exchange would continue to trade on the original Phlx XL system (the ''legacy system'') during the rollout period. By the end of the rollout period, all options traded on the Exchange would be traded on the Phlx XL II system, and no options would be traded on the legacy system. Accordingly, the Exchange proposes to distinguish the proposed rules applicable to options traded on the Phlx XL II system from existing Exchange rules applicable to options traded on the legacy system.

Within 90 days following the completion of the rollout of the Phlx XL II system, the Exchange has represented that it will offer a data feed to all market participants, which would include disseminated Exchange top-of-market data (including orders, quotes and trades). The new data feed would also include all information that is included in the Exchange's Specialized Order Feed (''SOF''), which provides information concerning simple orders, complex orders and complex strategies to Exchange quoting members. The Exchange has also represented that, with respect to the speed with which users would receive this information, SOF users would receive this information no sooner than users of the new data feed.

III. Summary of Comments Received and Phlx's Response

The Commission received two comment letters objecting to certain aspects of Phlx's proposed rule change.[60] Both commenters object to Phlx's original proposal with regard to its proposed changes to Phlx's Firm Quote Rule, with NYSE Euronext believing that Phlx would not be displaying its best priced quotation, in violation of Rule 602 under the Act.[61] NYSE Euronext argues that this aspect of Phlx's proposal erodes investor confidence and adds unnecessary confusion to the marketplace.[62]

In its initial filing, in certain situations in the Opening, Quote Exhaust and Market Exhaust Processes, Phlx proposed to disseminate the reference price at a zero-size quotation on one side of the market. NYSE Euronext argues that Phlx's proposed zero-size quotation would mask its true best available price and also fall short of Rule 602's minimum size requirements. NYSE Euronext argues that disseminating zero-size quotes in this manner would also raise issues for ''smart routers'' which are generally programmed to route to the NBBO, which NYSE Euronext believes would result in increased order processing latency and might prevent customers an opportunity for execution because routers might be delayed in sending orders to other market centers that actually had liquidity at their displayed best bid or offer.[63] The commenters state that market participants, including options exchanges, market makers and routers, would encounter operational difficulties with the zero-size quotation, in that it would require systems to be reprogrammed or otherwise adjusted to work around the Phlx-generated quote.[64]

Both commenters also point to conflicts of the Phlx zero-size proposal with The Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Current Linkage Plan''),[65] with NYSE Euronext noting that markets may not be able to avail themselves of certain provisions of the plan that require a Linkage Order to be sent to the exchange at the NBBO. CBOE states that the proposed quotation would undermine the objectives of the Current Linkage Plan and impact the willingness of CBOE members and traders across the industry to post bids or offers when Phlx was displaying the zero-sized quotation, if they might create or contribute to a locked market.

Finally, NYSE Euronext also argues that disseminating prices with no associated size to the Options Price Reporting Authority (''OPRA'') for dissemination to vendor is inconsistent with the provisions of the OPRA plan as it would not ''reflect the current state of the market.'' [66]

In its comment letter, CBOE also raises concerns regarding execution at the end of the Market Exhaust Auction.[67] Specifically, CBOE notes that, at the end of the auction if Phlx has an order that could be filled within the AQR, it would trade at the best price in which the entire order can be executed. CBOE questions why, under this framework, ''better priced auction responses are ignored just because they are not large enough to fill the entire order, when the order, by its terms, is eligible for a partial fill'' and how customer orders benefit from this process.[68]

CBOE also expresses concern that the proposed rule change may contemplate certain entitlements (*e.g.,* directed order, preferred, and specialist entitlements) extending to the final execution in a Market Exhaust Auction [69] and is specifically concerned about how Phlx's matching rules regarding order allocation would apply to a situation where the aggregate contra-interest at the final auction price is greater in size than the initiating order. CBOE requested clarification on whether such entitlements would be applied when the potential recipient of the entitlement (*i.e.,* the specialist or directed Market Maker) was not quoting the series at the time the initiating order was received.

Finally, CBOE notes that the auction appears to take place even if there are orders on the Phlx book.[70] CBOE questions whether those existing orders are allowed to participate in the auction,

[58] *See* Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31).

[59] For a more detailed discussion of these additional changes, *see* Notice at 17257–58 and Amendment No. 3.

[60] *See* NYSE Euronext Letter and CBOE Letter, *supra* at footnote 7.

[61] *See* 17 CFR 242.602 (Dissemination of Quotations in NMS Securities).

[62] *See* NYSE Euronext Letter at 2.

[63] *See* NYSE Euronext Letter at 1–2.

[64] *See* NYSE Euronext Letter at 2 and CBOE Letter at 2.

[65] *See* NYSE Euronext Letter at 2–3 and CBOE Letter at 1–2.

[66] *See* Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information, Section V(b).

[67] *See* CBOE Letter at 2–3.

[68] *See* CBOE Letter at 3.

[69] *See id.*

[70] *See id.*

as CBOE interprets the proposed rule change as providing the auction notification only to Phlx market makers.

In its Response Letter, Phlx noted that, in Amendment No. 3, it responded to many of the concerns raised by CBOE, as well as all of NYSE Euronext's comments.[71]

In responding to CBOE's comment relating to the end of the Market Exhaust Auction, when the XL II system would trade at the at the best price (within an established AQR) that the entire order can be executed, Phlx explains that its Market Exhaust Auction would function in the same manner as its proposed opening process, in that it would result in a single price where the entire incoming order can be filled with normal NBBO protection.[72] Phlx disputes CBOE's contention that contra-side bids or offers received during the auction at a better price than the execution price would be ''ignored,'' and notes that such bids or offers would have price priority and would be executed at the single execution price.[73]

Phlx further explains that, if the PBBO includes marketable limit orders on the Phlx limit order book at the time the incoming order is received that are priced at or within the NBBO, such orders would be executed immediately by its XL II system before the auction begins, while limit orders that are not at the PBBO and are at or within the NBBO would participate in the auction.[74] Finally, Phlx states that its XL II system would not execute any trade at a price through the NBBO unless it had routed contracts to the NBBO markets contemporaneously (consistent with the ''trade and ship'' concept).[75]

Finally, in response to CBOE's request for clarification regarding participation entitlements under the proposed exhaust auctions, Phlx explains that for specialists that receive Directed Orders in trade allocations stemming from trade executions following an exhaust auction, the trade allocation algorithm set forth in Phlx Rule 1014(g)(vii) would apply.[76] Phlx further notes that to receive its entitlement, a specialist must have submitted a quote at the execution price and is not entitled to receive a number of contracts that is greater than his or her disseminated size.[77] Phlx states that, for Directed Orders, the trade allocation algorithm set forth in Phlx Rule 1014(g)(viii) would apply and clarifies that, in order for a Directed Specialist, Directed SQT or Directed RSQT participant to receive their entitlement, they must be quoting at the Phlx disseminated price (which must be at the NBBO) at the time of receipt of the Directed Order. Therefore, if a Directed Specialist, Directed SQT or Directed RSQT does not submit a quotation at the NBBO execution price until the auction is initiated, they would not receive the entitlement described in Phlx Rule 1014(g)(viii).[78]

IV. Discussion

After carefully reviewing the proposed rule change, as amended, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[79] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[80] which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission also finds that the proposed rule change, as amended, is consistent with the provisions of Section 6(b)(8) of the Act,[81] 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.

The Commission notes that while it believes the proposed rule change, as amended, is consistent with the Current Linkage Plan, the Exchange acknowledges that, should the Commission approve the proposed Options Order Protection and Locked/Crossed Market Plan,[82] modifications to certain proposed rules may be necessary to ensure compliance with that plan.

Opening Process

The Exchange has proposed a new opening process that is designed, in general, to: (1) Ensure that an option would open within a reasonable period of time after the underlying security is open and do so within an appropriate Phlx opening price range; (2) allow Phlx to route,[83] if necessary, to other same or better-priced markets contemporaneously with its opening of an option series so as to maximize the number of contracts executing at the open; and (3) allow quoting market participants to enter trading interest at multiple price levels.

The Commission believes that the proposed rules governing the opening procedures on Phlx XL II provide for a reasonable process for the Exchange to conduct its opening. The Commission believes that the proposed opening process may provide better executions to users, as well as more consistent prices on executions and a smoother transition from the opening to the regular trading day. Accordingly, the Commission believes that the proposed opening process is consistent with the Act.

Amendments to the Firm Quote Rule

Changes to Rule 1082 include the addition of two new functionalities that are intended to enhance the ability for Phlx XL II participants to refresh, and potentially improve, their quotations when their option quotation size is exhausted at a particular price level, and that would reflect the Exchange's ability to refresh its disseminated market following the exhaustion of the Exchange's disseminated size.

The purpose of Quote Exhaust is to enhance the process for refreshing a participant's quote that has been fully exhausted by an incoming quote or order that has, after exhausting the Phlx quote at a particular price level, remaining size to be executed at a price through the reference price. The Quote Exhaust functionality provides an opportunity for remaining portions of incoming quotes or orders to be executed on the Exchange at prices that are equal to or better than away markets by allowing Phlx XL II participants to refresh their quotes before routing away, thus potentially providing better prices at which to execute such remaining portions. In addition, Quote Exhaust is intended to provide an opportunity for such quote or order to receive a price for that order better than the next price that would otherwise be available on Phlx whether by executing on the Phlx or by routing to applicable away markets. In

[71] *See* Response Letter at 1.

[72] *See id.*

[73] *See id.*

[74] *See id.*

[75] *See id* at 1–2.

[76] *See id* at 2.

[77] *See id.*

[78] *See id.*

[79] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[80] 15 U.S.C. 78f(b)(5).

[81] 15 U.S.C. 78f(b)(8).

[82] *See* Securities Exchange Act Release No. 59647 (March 30, 2009), 74 FR 15010 (April 2, 2009) (File No. 4–546).

[83] Similar to the Exchange's current routing methodology under the Current Linkage Plan the Exchange would only route customer, non-contingency orders.

addition, the Commission notes that market participants may utilize IOC orders if they do not wish their order to be included in the Quote Exhaust process.

The Market Exhaust is intended to provide Phlx XL II participants an opportunity to participate in the Market Exhaust Auction when an initiating order is received by the Phlx XL II system when no Phlx XL II participant is quoting in a given series. The Commission notes that, as with the Quote Exhaust process, market participants may utilize IOC orders if they do not wish their order included in the Market Exhaust process.

The Commission believes that these changes to the order handling process should assist with routing to liquidity available at other exchanges while preventing non-exempt trade-throughs of other markets in compliance with the Current Linkage Plan. The Commission further believes that the Quote Exhaust and Market Exhaust functionalities should result in greater continuity in prices as they introduce a price check to limit executions at far away prices. The Commission finds that the proposed amendments to Phlx's firm quote rule, including its proposed Quote Exhaust and Market Exhaust procedures, are consistent with the Act.

Expanded Order Types

The Exchange has proposed FIND and SRCH orders, as outlined above, which are designed to utilize route timers prior to routing to applicable away markets in order to provide Phlx XL II participants an opportunity to interact with such orders prior to routing away as needed. In addition, Phlx XL II provides for a DNR order type for those users that only want executions on Phlx. Phlx has represented that IOC orders would never go through the exposure period outlined for the FIND and SRCH order types in the proposed rules.

The Commission believes that these new order types may improve routing to liquidity available at other exchanges while preventing non-exempt trade-throughs of other markets in compliance with the Current Linkage Plan, and provide users with increased flexibility and control in how their orders are handled. The Commission believes that the proposed order types are consistent with the Act.

Routing

With respect to order routing, the Phlx XL II system would route only customer FIND and SRCH orders with no other contingencies. Customer FIND and SRCH orders would first be checked by the Phlx XL II system for available contracts for potential execution, then orders would be sent to other available market centers for potential execution. When checking the book, the Phlx XL II system would seek to execute at the price at which it would send the order to a destination market center. In situations where the Exchange's disseminated bid or offer is one MPV inferior to the NBBO price, the Phlx XL II system would contemporaneously route to the away market(s) disseminating the NBBO at such away market's size, and execute remaining contracts at the Exchange's disseminated bid or offer up to its disseminated size. If contracts remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the Phlx XL II system would not route the order to the locking or crossing market center, except as specified below. Orders sent to other markets do not retain time priority with respect to other orders in the Phlx XL II system and the Phlx XL II system would continue to execute other orders while routed orders are away at another market center. Once routed by the Phlx XL II system, an order becomes subject to the rules and procedures of the destination market including, but not limited to, order cancellation. If a routed order is subsequently returned, in whole or in part, that order, or its remainder, shall receive a new time stamp reflecting the time of its return to the Phlx XL II system. Entering member organizations whose orders are routed to away markets shall be obligated to honor such trades that are executed on away markets to the same extent they would be obligated to honor a trade executed on the Exchange.

Additionally, Phlx has proposed that NOS serve as the Routing Facility of the Exchange. The sole use of NOS by the Exchange will be to route orders in options listed and trading on the Phlx XL II system to away markets pursuant to Exchange rules and on behalf of the Exchange. If NOS were to perform any other functions for Phlx, Phlx would have to file a proposed rule change with the Commission pursuant to Section 19 of the Act and the rules and regulations thereunder.

As a facility, NOS will be subject to Exchange oversight, as well as Commission oversight.[84] NOS will also be a member of an SRO unaffiliated with Phlx that is its designated examining authority, and Phlx will establish and maintain procedures and internal controls reasonably designed to restrict the flow of confidential and proprietary information between Phlx and its facilities, including NOS, and any other entity, including any affiliate of NOS, and, if NOS or any of its affiliates engages in any other business activities other than providing routing services to the Exchange, between the segment of NOS or its affiliate that provides the other business activity and the routing services.[85] In addition, the books, records, premises, officers, directors, agents, and employees of NOS, as a facility of Phlx, will be deemed to be those of the Exchange for purposes of and subject to oversight pursuant to the Act.[86] The Commission notes that NOS's routing services are optional, and therefore not the exclusive means for accessing better priced orders in other market centers.

A participant in the PHLX XL II system would be free to route its orders to other market centers through alternative means. In light of the protections discussed above, including the regulation of NOS as a facility of the Exchange with the respect to routing of orders, the Commission believes that Phlx's proposed rules and procedures regarding the use of NOS to route orders to away markets are consistent with the Act.[87]

Phlx has requested that the Commission approve its affiliation with NOS for the purpose of NOS providing routing services to the Exchange for orders that first attempt to access liquidity on Phlx's system. Previously, the Commission approved Phlx's affiliation with NOS for the limited purpose of receipt of orders from NASDAQ Exchange that first attempt to access liquidity on NASDAQ Exchange's systems before routing to Phlx.[88] 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.[89] Although the Commission

[84] Further, the Commission notes that the Exchange will be responsible for filing with the Commission proposed rule changes and fees relating to NOS's outbound routing function and NOS's outbound routing function will be subject to exchange non-discrimination requirements.

[85] *See* Phlx Rule 1080(m)(iii)(C).

[86] *See* Phlx Rule 1080(m)(iii)(D).

[87] In addition, the Commission notes that the Phlx rules and procedures applicable to NOS are similar to the rules and procedures adopted by other exchange to govern their routing of orders to other market centers. *See, e.g.,* NYSE Rule 17, NYSE Amex Rule 17, and Nasdaq Rules 4758.

[88] *See* Securities Exchange Act Release No. 58179, *supra* note 58.

[89] *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77); Securities Exchange Act

Continued

continues to be concerned about potential unfair competition and conflict of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, the Commission believes that it is appropriate and consistent with the Act to allow NOS to be an affiliate of Phlx to provide routing services for orders that first attempt to access liquidity on Phlx's systems before routing to other exchanges in light of the protections afforded by the conditions described above.

Miscellaneous Changes

The Exchange also proposed several changes to its rules to delete obsolete provisions and generally update other relevant rules. The Commission believes that these clarifications and deletions should assist Phlx members in better understanding Phlx's rules, thus promoting greater compliance with such rules. The Commission believes that these proposed rule changes are consistent with the Act.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 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–2009–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–32. 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 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–2009–32 and should be submitted on or before June 24, 2009.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, prior to the thirtieth day after publication for comment in the **Federal Register**.

In Amendment No. 3, the Exchange responded to comments submitted by NYSE Arca and CBOE [90] with regard to its use of a zero size bid or offer during certain situations in the opening process, the Quote Exhaust and the Market Exhaust.[91] These commenters argued that dissemination of a zero size quotation violated the Quote Rule,[92] was inconsistent with Linkage Plan and OPRA Plan, and would pose operational problems for market participants.

In Amendment No. 3, the Exchange proposed several changes to its proposed rules governing the opening process, Quote Exhaust and Market Exhaust to address these concerns.[93] Specifically, in those situations where Phlx initially proposed to disseminate a quote that would contain the balance of an inbound order and an exchange generated quote for a size of zero on the other side of the market, the XL II system would instead disseminate, on the opposite side of the market from any remaining unexecuted contracts: (i) A bid price of $0.00, with a size of one contract if the remaining size is a seller; or (ii) an offer price of $200,000, with a size of one contract if the remaining size is a buyer. In Amendment No. 3, Phlx states that the fact that there is no quote from any XL II participant is an unusual market condition which Phlx believes requires it to disseminate via OPRA such a quote to indicate that there is a non-firm condition on the side of the market that is exhausted.

The Commission believes that this change would allow Phlx to effectively post a non-firm quote on one side of the market, while attempting to attract interest to fill an order on the other side of the market. The Commission believes that this proposal is consistent with the Quote Rule's provisions regarding non-firm quotations.[94] Specifically, Rule 602(a)(3)(i) provides that if, at any time a national securities exchange is open for trading, the exchange determines, pursuant to rules approved by the Commission, that the level of trading activities or the existence of unusual market conditions is such that the exchange is incapable of collecting, processing, and making available to vendors the data for a subject security required to be made available in a manner that accurately reflects the current state of the market on such exchange, such exchange shall immediately notify all specified persons of that determination and, upon such notification, the exchange is relieved of its obligations under paragraphs (a)(1) and (2) of Rule 602 relating to collecting and disseminating quotations, subject to certain other provisions of Rule 602(a)(3).

By proposing to disseminate a bid of $0.00 for one contract or an offer of $200,000 for one contract in certain situations delineated in it rules, the Commission believes that Phlx is adequately communicating that it is non-firm on that side of the market in compliance with the Quote Rule. Further, the Commission believes that these changes proposed by Phlx in Amendment No. 3 would be consistent with the Current Linkage Plan in that they would not result in a locked market situation. Finally, these changes should address the commenter's concerns relating to the operational issues associated with Phlx's originally proposed zero-size quotation.

The Commission notes that this aspect of the proposal is being approved on a pilot basis with the pilot period to end on November 30, 2009. The

Release No. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006).

[90] *See supra* notes 60–70 and accompanying text.

[91] *See supra* notes 13–38 and accompanying text.

[92] 17 CFR 242.602.

[93] *See* proposed Rules 1017(l)(iv)(C)(7), 1082(a)(1)(B)(3)(b),1082(a)(ii)(B)(3)(g)(iv)(A)(3), 1082(a)(ii)(B)(3)(g)(iv)(A)(4), 1082(a)(ii)(B)(3)(g)(iv)(B)(2), 1082(a)(ii)(B)(3)(g)(iv)(B)(3), 1082(a)(ii)(B)(4)(b), and 1082(a)(ii)(B)(4)(d)(iv)(D). *See also* Response Letter at 1.

[94] *See* 17 CFR 242.602(a)(3)(i) and (ii).

Commission understands that, currently, there is no mechanism for OPRA to identify only one side of a quote as non-firm. During this pilot period, the Commission expects that the Exchange will work with OPRA to develop the capability to identify such a mechanism. Once that capability is developed, there should no longer be a need to use a $0.00 bid or $200,000 offer to reflect a non-firm status on one-side of the market.

In addition, in response to CBOE's comment letter, Phlx amended proposed Rule 1082(a)(ii)(B)(4), Market Exhaust, to clarify that, if an order is received when there are no quotations available in the Phlx market, but Phlx has an order on its book at the NBBO, Phlx would immediately execute the incoming order against the order on its book at the NBBO.

The Commission believes that Phlx's proposal to disseminate a non-firm quote on one side of the market with size for a limited period of time, and to execute orders during a Market Exhaust situation if there limit order resting on Phlx at the NBBO, responds to the concerns raised by commenters and, as discussed above, is consistent with the Act. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[95] to approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, on an accelerated basis.

The Commission believes that, with regard to the additional comments made by CBOE relating to the proposed rules for order handling following the Market Exhaust Auction and the circumstances under which specialists and other Phlx XL II participants would receive entitlements,[96] Phlx has sufficiently responded to and clarified these aspects of its proposal.

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular with Section 6(b)(5) of the Act.[97]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[98] that the proposed rule change (SR–Phlx–2009–32), as amended, be, and it hereby is, approved on an accelerated basis.

[95] 15 U.S.C. 78s(b)(2).

[96] *See supra* note 7.

[97] 15 U.S.C. 78f(b)(5).

[98] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[99]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12918 Filed 6–2–09; 8:45 am]

BILLING CODE 8010–01–P

[99] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6599]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

Summary: The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 ''C'' Street NW., Washington, DC, June 23 and June 24, 2009, in Conference Room 1105. Prior notification and a valid government-issued photo ID (such as driver's license, passport, U.S. government or military ID) are required for entrance into the building. Members of the public planning to attend must notify Nathaniel Smith, Office of the Historian (202–663–3268) no later than June 18, 2009, to provide date of birth, valid government-issued photo identification number and type (such as driver's license number/state, passport number/country, or U.S. government ID number/agency or military ID number/branch), and relevant telephone numbers. If you cannot provide one of the specified forms of ID, please consult with Nathaniel Smith for acceptable alternative forms of picture identification. In addition, any requests for reasonable accommodation should be made prior to June 15, 2009. Requests for reasonable accommodation received after that time will be considered, but might be impossible to fulfill.

The Committee will meet in open session from 1:30 p.m. through 2:30 p.m. on Tuesday, June 23, 2009, in the Department of State, 2201 ''C'' Street NW., Washington, DC, in Conference Room 1105, to discuss declassification and transfer of Department of State records to the National Archives and Records Administration and the status of the *Foreign Relations* series. The remainder of the Committee's sessions from 2:45 p.m. until 5 p.m. on Tuesday, June 23, 2009, and 9 a.m. until 12 p.m. on Wednesday, June 24, 2009, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions of agency declassification decisions concerning the *Foreign Relations* series and other declassification issues. These are matters properly classified and not subject to public disclosure under 5 U.S.C. 552b(c)(1) and the public interest requires that such activities be withheld from disclosure. Questions concerning the meeting should be directed to Ambassador John Campbell, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123, (e-mail *history@state.gov*).

Dated: May 19, 2009.

John Campbell,

Executive Secretary, Department of State.

[FR Doc. E9–12942 Filed 6–2–09; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending May 23, 2009

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. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2009–0123.

Date Filed: May 20, 2009.

Parties: Members of the International Air Transport Association.

Subject:

PSC/RESO/143 dated 6 February 2009.

Finally Adopted Resolutions & Recommended Practices r1–r44.

PSC/MINS/026 dated 6 February 2009.

Minutes.

Intended effective date: 1 June 2009.

Barbara J. Hairston,

Supervisiory Dockets Officer, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. E9–12959 Filed 6–2–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2009–0027]

Request for Renewal of Currently Approved Information Collection: Certification of Enforcement of Vehicle Size and Weight Laws

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew an information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on March 16, 2009. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by July 6, 2009.

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA–2009–0027 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Nicholas (202–366–2317), Department of Transportation, Federal Highway Administration, Office of Freight Management and Operations, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Certification of Enforcement of Vehicle Size and Weight Laws

Background: Title 23, U.S.C., section 141, requires each State, the District of Columbia, and Puerto Rico to file an annual certification that they are enforcing their size and weight laws on Federal-aid highways and that their Interstate System weight limits are consistent with Federal requirements to be eligible to receive an apportionment of Federal highway trust funds. Section 141 also authorizes the Secretary to require States to file such information as is necessary to verify that their certifications are accurate. To determine whether States are adequately enforcing their size and weight limits each must submit an updated plan for enforcing their size and weight limits to the FHWA at the beginning of each fiscal year. At the end of the fiscal year, they must submit their certifications and sufficient information to verify that their enforcement goals established in the plan have been met. Failure of a State to file a certification, adequately enforce its size and weight laws, and enforce weight laws on the Interstate System that are consistent with Federal requirements could result in a specified reduction of its Federal highway fund apportionment for the next fiscal year. In addition, section 123 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2689, 2701) requires each jurisdiction to inventory (1) its penalties for violation of its size and weight laws, and (2) the term and cost of its oversize and overweight permits.

Respondents: The State Departments of Transportation (or equivalent) in the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico.

Frequency: Twice annually.

Estimated Average Burden per Response: Each response will take approximately 40 hours.

Estimated Total Annual Burden Hours: The estimated total annual burden for all respondents is 4,160 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: May 27, 2009.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E9–12852 Filed 6–2–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2009–0102]

Notice of Receipt of Petition for Decision That Nonconforming 2006 BMW M3 Passenger Cars Manufactured Before September 1, 2006 Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2006 BMW M3 passenger cars manufactured before September 1, 2006 are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2006 BMW M3 passenger cars manufactured before September 1, 2006 that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2006 BMW M3 passenger cars manufactured before September 1, 2006) and (2) they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is July 6, 2009.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. 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 19477–78) or you may visit *http://DocketInfo.dot.gov.*

How To Read Comments Submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Federal Docket Management System (FDMS) Web page *http://www.regulations.gov.*

(2) On that page, click on ''Advanced Docket Search.''

(3) On the next page select ''NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'' from the drop-down menu in the Agency field and enter the Docket ID number shown at the heading of this document.

(4) After entering that information, click on ''submit.''

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see. You may download the comments. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register.**

Wallace Environmental Testing Laboratories, Inc. (WETL) of Houston, TX (Registered Importer 90–005) has petitioned NHTSA to decide whether nonconforming 2006 BMW M3 passenger cars manufactured before September 1, 2006 are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 2006 BMW M3 passenger cars manufactured before September 1, 2006 that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified 2006 BMW M3 passenger cars manufactured before September 1, 2006 to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 2006 BMW M3 passenger cars manufactured before September 1, 2006, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2006 BMW M3 passenger cars manufactured before September 1, 2006 are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 118 *Power-Operated Window, Partition, and Roof Panel Systems,* 124 *Accelerator Control Systems,* 135 *Passenger Car Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* 302 *Flammability of Interior Materials,* and 401 *Interior Trunk Release.*

In addition, the petitioner claims that the vehicles comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* inscription of the word ''brake'' on the instrument cluster in place of the international ECE warning symbol and installation of a U.S.-model speedometer, or modification of the existing speedometer to conform with the requirements of this standard.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model high mounted stop lamp and associated wiring.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard on all vehicles not already so equipped.

Standard No. 111 *Rearview Mirrors:* installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror on all vehicles not already so equipped.

Standard No. 114 *Theft Protection:* installation of a supplemental key warning buzzer, or installation of U.S.-version software on all vehicles not already so equipped.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning system that the meets the requirements of this standard.

The petitioner states that the crash protection system used in these vehicles

consists of dual front airbags, knee bolsters, and combination lap and shoulder belts at the front outboard seating positions.

Standard No. 301 *Fuel System Integrity:* inspection of all vehicles and replacement of any non U.S.-model fuel system components with U.S.-model components.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR Part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 27, 2009.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E9–12841 Filed 6–2–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2009–0101]

Notice of Receipt of Petition for Decision That Nonconforming 2006 Porsche Cayenne Multipurpose Passenger Vehicles Manufactured Prior to September 1, 2006 Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2006 Porsche Cayenne multipurpose passenger vehicles manufactured prior to September 1, 2006 are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2006 Porsche Cayenne multipurpose passenger vehicles (MPVs) manufactured prior to September 1, 2006 that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because: (1) They are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified 2006 Porsche Cayenne MPV manufactured prior to September 1, 2006), and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is July 6, 2009.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. 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 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (WETL) (Registered Importer 90–005) has petitioned NHTSA to decide whether nonconforming 2006 Porsche Cayenne MPVs manufactured prior to September 1, 2006, are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 2006 Porsche Cayenne MPVs manufactured prior to September 1, 2006, that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it carefully compared non-U.S. certified 2006 Porsche Cayenne MPVs manufactured prior to September 1, 2006, to their U.S.-certified counterparts, and found the vehicles to be substantially similar with

respect to compliance with most FMVSS.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 2006 Porsche Cayenne MPVs manufactured prior to September 1, 2006, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2006 Porsche Cayenne MPVs manufactured prior to September 1, 2006, are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 118 *Power-Operated Window, Partition, and Roof Panel Systems,* 119 *New Pneumatic Tires for Vehicles Other than Passenger Cars,* 120 *Tire Selection and Rims for Motor Vehicles Other than Passenger Cars,* 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Inscription of the word ''brake'' on the instrument cluster in place of the international ECE warning symbol and installation of a U.S.-model speedometer, or modification of the existing speedometer to conform with the requirements of this standard.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of U.S.-model headlamps and tail lamps to meet the requirements of this standard.

Standard No. 111 *Rearview Mirrors:* Installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror on all vehicles not already so equipped.

Standard No. 114 *Theft Protection:* Installation of a supplemental key warning buzzer, or installation of U.S.-version software on all vehicles not already so equipped.

Standard No. 208 *Occupant Crash Protection:* Installation of a seat belt warning system that the meets the requirements of this standard.

The petitioner states that the crash protection system used in these vehicles consists of dual front airbags, knee bolsters, and combination lap and shoulder belts at the front outboard seating positions.

Standard No. 301 *Fuel System Integrity:* Inspection of all vehicles and replacement of any non-U.S.-model fuel system components with U.S.-model components.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR Part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 27, 2009.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E9–12842 Filed 6–2–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 27, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 6, 2009 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0037.

Type of Review: Extension.

Form: TFS 5135.

Title: Voucher for Payment of Awards.

Description: Awards certified to Treasury are paid annually as funds are received from foreign governments. Vouchers are mailed to award holders showing payments due. Award holders sign vouchers certifying that he/she is entitled to payment.

Respondents: Individuals or households.

Estimated Total Burden Hours: 700 hours.

OMB Number: 1510–0043.

Type of Review: Extension.

Form: FMS–133, FMS–135.

Title: Notice of Reclamation and Debit Request for Recurring Benefit Payments.

Description: A program agency authorizes Treasury to recover payments that have been issued after the death of the beneficiary. FMS Form 133 is used to notify the FI. If the FI does not respond to the 133, a debit request (Form 135) is sent to the FRB.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 79,335 hours.

OMB Number: 1510–0045.

Type of Review: Extension.

Form: FMS–150–1, FMS–150–2.

Title: Trace Request for EFT Payments.

Description: Used to notify the FI that a beneficiary has claimed non-receipt of credit for a payment. The form is designed to help the FI locate any problem and to keep the beneficiary informed of any action taken.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 17,971 hours.

Clearance Officer: Wesley Powe, (202) 874–7662, Financial Management Service, Room 135, 3700 East West Highway, Hyattsville, MD 20782.

OMB Reviewer: Shagufta Ahmed, (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–12957 Filed 6–2–09; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of amendment to system of records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled ''Patient Representation Program Records—VA'' (100VA10NS10) as set forth in the **Federal Register** 67 FR 211 dated October 31, 2002. VA is amending the system by changing the system name to Patient Advocate Tracking System (PATS); Supplementary Information, Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses, the System Location; Categories of Records in the System; Safeguards; System Manager and Address. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than July 6, 2009. If no public comment is received, the amended system will become effective July 6, 2009.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed System of Records

Amendments to this System of Records are the result of the improvement of the tracking system from the Veterans Health Information Systems and Technology Architecture (VistA) to the utilization of a centralized Web based system, Patient Advocate Tracking System (PATS).

The primary function of the Patient Advocate Program is to serve as a direct channel of communication and mediation between VA healthcare facility management and individual patients, veterans who have applied for care, their friends, their families, VA healthcare providers and members of the community. A VA healthcare provider is anyone hired by VA and working at a VA facility be it a VA medical center (VAMC), Outpatient Clinic or Community-Based Outpatient Clinic. An employee may be full-time, part-time, or intermittent and includes temporary workers. Members of the community include congressional liaisons, veteran's service organizations and attorneys. The program functions as the liaison between the patient and the healthcare system, ensures that patients receive entitled healthcare benefits and services in a dignified and compassionate manner, and ensures that healthcare facility policies and practices are in conformance with the VA Patients' Rights and Responsibilities. The program is the primary source for response when veteran patients' expectations are not met within the VA healthcare system. The Patient Advocates' activities cross all organizational lines of authority at the healthcare facilities for the purpose of expressing patient concerns and resolution of patient complaints. Information collected from the program is integrated into the overall quality improvement plans and activities of the healthcare facility. The purpose of the system of records is to establish a repository for the information that is collected to accomplish the purposes described. Records are maintained at the local VA level on behalf of the veteran making the complaint or compliment so improvements may be made at the VA healthcare facility.

II. Proposed Routine Use Disclosures of Data in the System

A new Routine Use 15 is added. VA may disclose information from this system to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation. This routine use enables VA to provide information to EEOC to assist it in fulfilling its duties to protect employees' rights, as required by statute and regulation.

A new Routine Use 16 is added. VA may disclose information from this system to the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law. This routine use enables VA to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation.

A new Routine Use 17 is added. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

This routine use permits disclosures by the Department to report a suspected incident of identity theft and provide information and/or documentation related to or in support of the reported incident.

A new Routine Use 18 is added. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity 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 embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38

U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which VA collected the information. In all of the routine use disclosures described above, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: May 18, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

100VA10NS10

SYSTEM NAME:

Patient Advocate Tracking System (PATS)–VA.

SYSTEM LOCATION:

PATS application is installed on a centrally located system at Falling Waters. The backup system in case of disaster recovery scenario is located at Hines. The data entered into the application also resides on this central system. A limited set of information is transferred from this central system in Falling Waters to Austin Automation Center. This limited set of information transferred to Austin Automation Center is utilized to run specific reports for central business office.

Patient contacts are coded in order to facilitate tracking of these contacts to show where system improvements might be made. Aggregate data are maintained at the Network and Headquarters levels for the development of reports to make system wide changes. Records are collected and stored electronically for ease of retrieval by individual patient names and ease in compiling aggregate data.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning individual patients, veterans who have applied for care, their friends, their families, VA healthcare providers and members of the community. Members of the community include congressional liaisons, veterans service organizations and attorneys.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include information maintained in paper records, and entered into a centralized Web based system, Patient Advocate Tracking System (PATS) related to concerns and complaints regarding an individual's medical care, VA benefits, and/or encounters with healthcare facility personnel. The records include information that is compiled to review, investigate, and resolve these issues.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, chapter 73, section 7301 (b).

PURPOSE(S):

The records may be used for such purposes as producing various management and patient follow-up reports; responding to patient and other inquiries; conducting healthcare-related studies, statistical analysis, and resource allocation planning; providing clinical and administrative support to patient medical care; audits, reviews and investigations conducted by the staff of the healthcare facility, VISN, VHA Headquarters, and VA's Office of Inspector General (OIG); law enforcement investigations; quality improvement reviews and investigations; personnel management and evaluation; employee ratings and performance evaluations; employee disciplinary or other adverse action, including discharge; advising healthcare professional licensing or monitoring bodies or similar entities or activities of VA and former VA healthcare personnel; accreditation of a facility by an entity such as the Joint Commission; and, notifying medical schools of medical students' performance. The information is integrated into the overall quality improvement plans and activities of the facility and used to improve services and communications, as well as, to track categories of complaints and the locations of complaints in order to improve the delivery of healthcare.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR Parts 160 and 164, *i.e.*, individually identifiable health information, and 38 U.S.C. 7332, *i.e.*, medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR Parts 160 and 164 permitting disclosure.

1. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the Member, when the Member or staff person requests the record on behalf of and at the written request of the individual.

2. Disclosure may be made to the National Archives and Record Administration and the General Services Administration for records management inspections conducted under authority of Title 44, Chapter 29, of the United States Code (U.S.C.).

3. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the Information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

4. Disclosure may be made to any facility regarding the hiring, performance, or other personnel-related information with which there is, or there is proposed to be, an affiliation, sharing agreement, contract, or similar arrangement for purposes of establishing, maintaining, or expanding any such relationship.

5. Disclosure may be made to a Federal agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individual employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the Department to obtain information relevant to a Department decision concerning the hiring, retention or termination of an employee

or to inform Federal agencies, licensing boards or the appropriate non-government entities about the healthcare practices of employees who resigned, were terminated, or retired and whose professional healthcare activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency. These records may also be disclosed as part of an ongoing computer-matching program to accomplish these purposes.

6. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Joint Commission, College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

7. Disclosure may be made to a State or local government entity or national certifying body which has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a healthcare profession, when requested in writing by an investigator or supervisory official of the licensing entity or national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named healthcare professional.

8. Disclosure of information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

9. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

10. Disclosure may be made to a Federal agency, in response to its request, in connection with 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 by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

11. Disclosure may be made to a Federal, State or local agency maintaining civil, criminal or other relevant information such as current licenses, if necessary to obtain information relevant to any agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other health, educational or welfare benefit.

12. Disclosure of information may be made to the next-of-kin and/or the person(s) with whom the patient has a meaningful relationship to the extent necessary and on a need-to-know basis consistent with good medical-ethical practices.

13. A record containing the name(s) and address(es) of present or former members of the armed services and/or their dependents may be disclosed under certain circumstances to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public's health or safety, if a qualified representative of such organization, agency or instrumentality has made a standing written request that such name(s) or address(es) be provided for a purpose authorized by law; provided that the record(s) will not be used for any purpose other than that stated in the request and that organization, agency or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

14. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, Tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

15. VA may disclose information from this system to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

16. VA may disclose information from this system to the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

17. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

18. VA may, on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity 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 embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper, microfilm, magnetic tape, disk, or laser optical media. In most cases, copies of back-up computer files are maintained at off-site locations.

RETRIEVABILITY:

Records are retrieved by name, social security number or other assigned identifiers of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to VA working and storage areas is restricted to VA employees on a ''need-to-know'' basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Patient Advocate Tracking System (PATS) is a Web based application installed on central computer systems in a data center at Falling Waters, WV. The systems are maintained by authorized personnel. The end users access the application using the Web browser installed on their desktops. Additionally, access to computer rooms at health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. ADP peripheral devices are placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in VistA may be accessed by authorized VA employees. Access to PATS application and data in the application is controlled at two levels; the systems recognize authorized employees by series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the application which is needed in the performance of their official duties. Information that is downloaded from PATS and maintained on personal computers is afforded similar storage and access protections as the data that is maintained in the original files. Access to information stored on automated storage media at other VA locations is controlled by individually unique passwords/codes.

3. Access to the Austin VA Data Processing Center is generally restricted to Center employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. Information stored in the computer may be accessed by authorized VA employees at remote locations including VA health care facilities, Information Systems Centers, VA Central Office, and Veteran Integrated Service Networks. Access is controlled by individually unique passwords/codes which must be changed periodically by the employee.

RETENTION AND DISPOSAL:

Paper records and information stored on electronic storage media are maintained and disposed of in accordance with Records Control Schedule 10–1, Section XLV, as authorized by the National Archives and Records Administration of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures; Director, National Veteran Service and Advocacy Program, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Officials maintaining the system are the Director at the facility where the individual were associated.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the VA facility location at which they are or were employed or made or have contact. Inquiries should include the person's full name, social security number, dates of employment, date(s) of contact, and return address.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they are or were employed or made contact.

CONTESTING RECORD PROCEDURES:

(*See* Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

The patient, family members, and friends, employers or other third parties when otherwise unobtainable from the patient or family; Patient Medical Records—VA (24VA136); private medical facilities and healthcare professionals; State and local agencies; other Federal agencies; VISNs, Veterans Benefits Administration automated record systems (including Veterans and Beneficiaries Identification and Records Location Subsystem—VA (38VA23) and the Compensation, Pension, Education and Rehabilitation Records—VA (58VA21/22); and various automated systems providing clinical and managerial support at VA healthcare facilities.

[FR Doc. E9–12954 Filed 6–2–09; 8:45 am]

BILLING CODE 8320–01–P

Reader Aids

Federal Register

Vol. 74, No. 105

Wednesday, June 3, 2009

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, JUNE

26077–26280 1
26281–26510 2
26511–26770 3

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Adminstratvie Orders:
Memorandums:
Memo. of May 27, 2009 26277

5 CFR

Proposed Rules:
894.....26302

7 CFR

319.....26511
457.....26281
1467.....26281
Proposed Rules:
205.....26591

8 CFR

214.....26514
274a.....26514

10CFR

72.....26285
Proposed Rules:
50.....26303
72.....26310
431.....26596

12 CFR

225.....26077, 26081
229.....26515
337.....26516
370.....26521

14 CFR

39.....26288, 26291
Proposed Rules:
39 .....26312, 26315, 26317, 26322

16 CFR

Proposed Rules:
321.....26118, 26130
322.....26118, 26130

26 CFR

Proposed Rules:
20.....26597

28 CFR

Proposed Rules:
16.....26598

31 CFR

356.....26084

33 CFR

117 .....26087, 26293, 26294, 26295, 26296
165 .....26087, 26089, 26297
Proposed Rules:
100.....26138, 26326
110.....26328
165.....26138

36 CFR

223.....26091
261.....26091

38 CFR

38.....26092

40 CFR

51.....26098
52 .....26098, 26099, 26103, 26525
180 .....26527, 26536, 26543
Proposed Rules:
52.....26141, 26600
63.....26142

42 CFR

412.....26546
Proposed Rules:
412.....26600

44 CFR

64.....26569
65.....26572, 26577
Proposed Rules:
67.....26636, 26640

47 CFR

73.....26299, 26300
74.....26300
Proposed Rules:
1.....26329

48 CFR

546.....26107
552.....26107
Proposed Rules:
2.....26646
4.....26646
12.....26646
39.....26646
52.....26646

50 CFR

17.....26488
216.....26580
635.....26110
648.....26589
Proposed Rules:
300.....26160
622.....26170, 26171
635.....26174
679.....26183

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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S. 454/P.L. 111–23
Weapon Systems Acquisition Reform Act of 2009 (May 22, 2009; 123 Stat. 1704)

H.R. 627/P.L. 111–24
Credit Card Accountability Responsibility and Disclosure Act of 2009 (May 22, 2009; 123 Stat. 1734)

Last List May 22, 2009

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